

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 821

UNITED STATES OF AMERICA, APPELLANT

v.

GREATER BUFFALO PRESS, INC., ET.AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF NEW YORK

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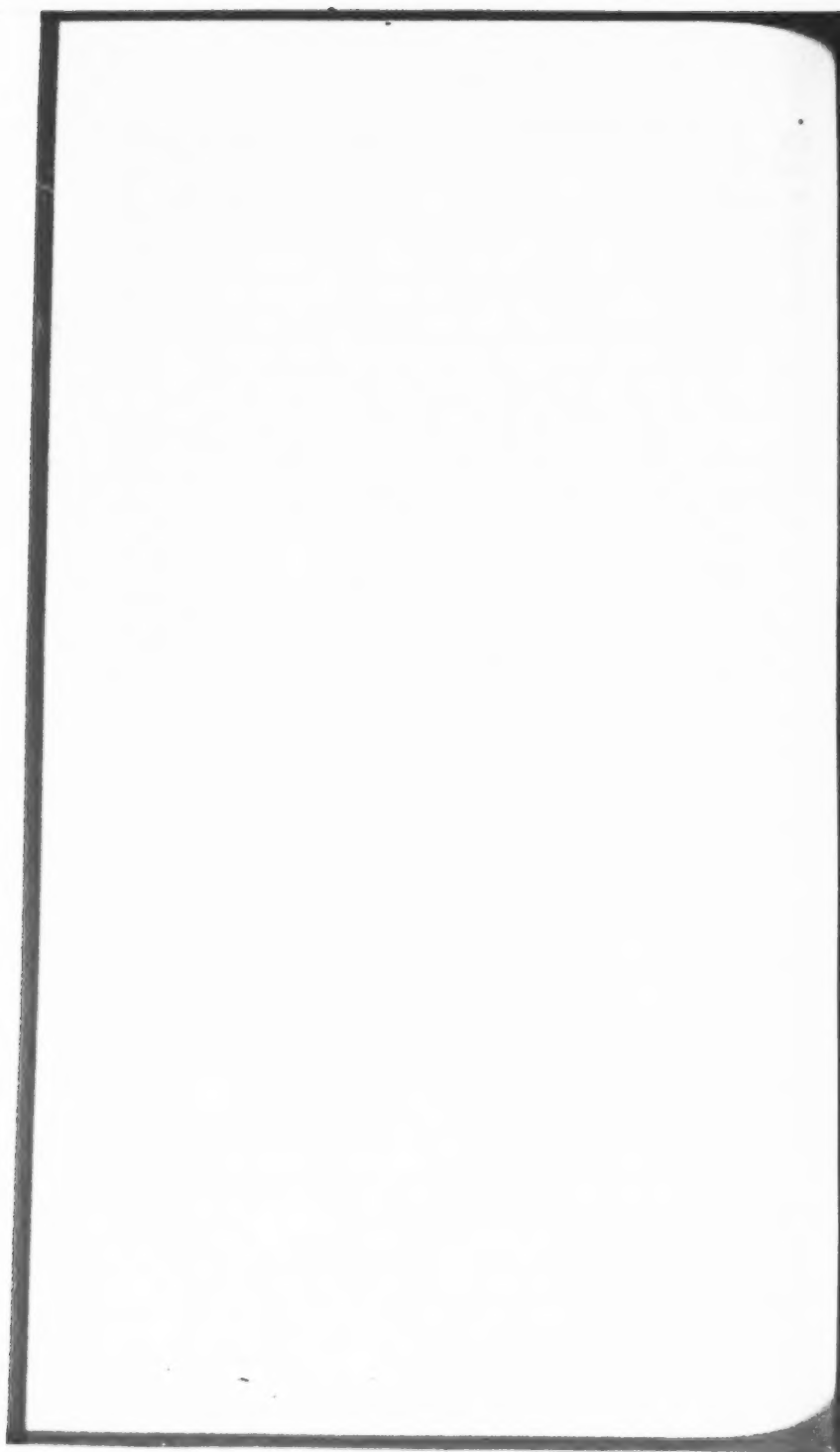
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Q. Then the rest of paragraph six, what does that do?

A. That merely describes the size of the page, and what an individual run means. It means the custom-made job as distinguished from a ready-print.

Q. Now, I note that you have a schedule of prices there: "175,000—\$5.23. Additional thousands—\$4.61. 150,000—\$5.34. Additional thousands—\$4.61." Then you have five more items similar to that with different prices and different schedules there. Now, had you been discussing those precise amounts with Nicht?

A. No. These were the prices that I—he wanted to know what it would cost, and I worked up these prices and he asked me to put them in a letter, and I gave him the letter.

Q. This was the first time you communicated those prices to Mr. Nicht in this precise detail?

A. I think so.

Q. And then paragraph seven makes provision for increase or decrease of prices based on labor; is that a fair summary of it?

A. Right, yes.

Q. Paragraph eight provides for an increase or decrease in the price, depending upon whether newsprint goes up or down or ink goes up or down beyond the price you have specified there?

A. That is right.

Q. And then I invite your attention to paragraph nine on page four. You said: "For the period of this contract, The Greater Buffalo Press, Inc., will contract to print newspaper supplements only for such accounts as it presently holds, and for such new accounts as it is privileged to negotiate and contract under this agreement, and for King Features Syndicate." Did that mean to you that Greater Buffalo would not do any contract printing for any other syndicate of newspaper supplements?

A. That we were not already doing. We were doing it for them all, so we were not conceding anything there.

Q. So what you undertook with him in this letter, if you were printing for an account, you were to continue printing for an account?

A. That is right.

Q. And for those new accounts that you specified in paragraph three, the four newspapers, if you got that you would print that?

A. Yes.

Q. And whatever you would print for King Features, 2060 you could print that, but no others, is that correct?

The COURT: I think he said there were no others.

Mr. BERNSTEIN: We will explore that.

The COURT: You mean new business starting up?

Mr. BERNSTEIN: Let us explore that.

The COURT: What you are striking at, you claim there was some illegality——

Mr. BERNSTEIN: My point, your Honor, is that this whole transaction was all one ball of wax. As part of the ball of wax, King wanted to be the exclusive sales agent. In other words, King didn't want Greater Buffalo Press to do business with anyone else but King. That is what King wanted.

By Mr. BERNSTEIN:

Q. Was that your understanding?

A. That is what they wanted.

Q. You were not about to give it to them?

A. No.

Q. You did state in paragraph nine of this letter, in response to his request to be your exclusive agent, you said to him that 2061 Greater Buffalo will contract to print only for King and only for its own accounts that it then had, or only for its accounts, for nobody else, is that correct?

A. What we were saying we would grant him was exclusive sales rights to something there wasn't anything to sell.

Q. Let's analyze that. At this time, this was before the contract that you made with Buffalo Color Press and with NEA to buy Buffalo Color Press' equipment or business and do the printing for NEA of the accounts then printed in Buffalo Color Press, is that correct?

A. Before that time?

Q. Yes.

A. Yes.

Q. It was?

A. Yes.

Q. So that if you signed a formal contract for paragraph nine, then you would be prohibited from printing the runs that were then in Buffalo Color Press, is that correct?

A. That is one of the thoughts we had after I wrote this letter.

Q. At the time you wrote the letter you were giving him in

writing, by this letter, a commitment that it was your understanding that you would not print the NEA business it
 2062 was then doing at Buffalo Color Press at either Dunkirk or Buffalo or Sylacauga or Lufkin?

Mr. RAICHLE: I object to that.

The COURT: "Commitment", this was simply an offer that never got off the ground.

Mr. BERNSTEIN: I will withdraw the word "commitment." I mean——

The COURT: Let me ask you this. This NEA color print matter that was just discussed with you, as I understand your answer, is something that became the subject of serious reconsideration after this offer to treat——

The WITNESS: Yes.

The COURT: ——or the beginning of negotiations had occurred?

The WITNESS: That is right.

The COURT: It became important to you in your considerations?

The WITNESS: That is right.

The COURT: This never culminated in any agreement, you claim?

The WITNESS: It did not.

The COURT: All right.

2063 By Mr. BERNSTEIN:

Q. But we understand that as of June 15, 1955, even though it didn't culminate in a formal, written contract, this is then what you told Nicht that you were in agreement with him that could be included in the contract, is that correct? That is your opening statement?

A. Well, we agreed up to the certain limitations. You got to submit it to your lawyer, submit it to the other people in your company.

Q. Is it a fair statement to say, all other things being equal, "if you, Mr. Nicht, and I, Mr. Koessler, have our druthers, this is the way it will be if there are no impediments to it"?

A. No, there were lots of other impediments; whether your attorney would okay it, whether your other people in the company would okay it. Leave me answer that other question you brought up; would it stop us for printing for NEA. No, it wouldn't, we were already printing for NEA and the Buffalo Color Press.

Q. Under written contract?

A. No, but were were printing for them. It wasn't excluded by this letter.

Q. In your opinion then this letter didn't exclude any
2064 new business from anybody that you were then printing for?

A. That is right.

Q. But King wanted—Nicht wanted it otherwise, is that correct, in his discussions with you?

A. Yes.

Q. He wanted you to print only for him, is that correct?

A. Well, that is hard to say. No, we print for ourselves, we print for everybody we otherwise printed for, which was everybody, so that I don't know what Nicht was talking about. That somewhere along the line some job would come up I hadn't thought about, maybe, you know how these things happen, that he would have the exclusive right to sell.

Q. The next part of paragraph nine says: "King Features
Syndicate on its part will process all its contracts for printing
four color, newspaper comic supplements through the Greater
Buffalo Press, Inc., and International Color Printing Company.
The exception to this provision is the contract which King
Features Syndicate holds with the Dallas Times Herald. At the
expiration of this contract, and at such time as King Features
Syndicate can do so without business embarrassment, King

Features Syndicate will process this printing at the
2065 Lufkin, Texas plant of the Greater Buffalo Press, Inc."

Now, did you have in mind when you said that in paragraph nine that King would do its printing business only with Greater Buffalo Press and International or any of Greater Buffalo Press' subsidiaries, except for this Dallas Times Herald which it would, when that contract expired, transfer to Lufkin?

A. No, I didn't. I put that in because Nicht was looking for something exclusive, we were going to look for something exclusive, I knew he would never agree to this.

Q. But that was what the language intended to convey; if he accepted it, you intended that he would be exclusive with Greater Buffalo Press?

A. No. If he accepted it, we would have had to get it okayed by other people, other than myself.

Q. Okay. Now, in number ten—

A. This was to make Nicht happy, if you could, at least for the moment.

Q. Did he give you the language for that part of number nine, or was that yours, who drafted that language?

A. I did.

Q. How about paragraph ten, did you draft the language of paragraph ten?

A. Yes. I did it all. Bad or whatever, I'll take the 2066 responsibility for doing everything, nobody helped me.

I got no legal advice on this.

Q. I take responsibility for a lot of things that have my signature on that I don't prepare. Some of my assistants prepare it, I adopt it by signing it. Was this——

A. I'm the author and the writer and the signer, unfortunately.

Q. Now, in paragraph ten you say: "The provisions contained in paragraph nine may be altered by mutual consent of The Greater Buffalo Press, Inc., and King Features Syndicate, where the interests of both parties are mutually served."

A. Where is this?

Q. Paragraph ten, the first sentence.

A. Paragraph ten, the first sentence.

Q. Then the second sentence you say: "Any and all provisions of this contract may be changed by mutual consent in the mutual interests of both parties." What did you have in mind when you drafted paragraph ten?

A. Well, if two people agreed on changing it, it could be changed.

Q. Until two people agreed on changing it, it would be in accordance with paragraph nine and the language of 2067 paragraph nine, so that King would print exclusively through Greater Buffalo and its subsidiaries, is that correct?

Mr. RAICHLE: I have an objection to it, it seems to me——

Mr. BERNSTEIN: I will withdraw the question.

By Mr. BERNSTEIN:

Q. Now, paragraph eleven says: "The Greater Buffalo Press, Inc., will grant first option to King Features Syndicate to purchase the business of The Greater Buffalo Press, Inc., in the event The Greater Buffalo Press, Inc., offers its business for sale. This contract is to be for a period of ten years." Now, had

there been any discussion with Nicht about the substance of paragraph eleven?

A. No. He wanted that in there, that is all.

Q. But that was his suggestion to go in?

A. All these are his suggestions.

Q. Well, paragraph ten was his suggestion too?

A. Yes, certainly it was.

Q. And paragraph nine was his suggestion?

A. No, I don't think that was his suggestion. That was a thought of mine.

Q. Pardon?

2068 A. That somewhere along the line we might change this thing.

Q. Paragraph eight was information that you supplied to him for the first time in this letter, correct?

A. Right.

Q. And paragraph seven and six——

A. At his request.

Q. Those prices, that was the first time that you listed those in those details in this letter?

A. That is right.

Q. How about paragraph five and four, had you discussed that with him before?

A. No. I mean——

Q. That was the first time in this letter, is that correct?

A. Yes.

Q. Now, what did you have in mind—strike it. Going back to paragraph eleven now, Mr. Koessler, you said that that was Mr. Nicht's suggestion?

A. Yes.

Q. Did he give you that suggestion orally or in the form of a written memorandum?

A. I think you'll find all of his memorandums in your exhibits in that black book. You will find every suggestion in this letter with the exception of prices in that book.

2069 Q. And the memoranda that are in the black book you are talking about, I assume you are referring to this——

Mr. MOORE: The affidavit of E. H. Feldman submitted in support of the order to show cause, set number two.

Mr. BERNSTEIN: Can we have that marked for identification?

(Thereupon document referred to was marked Plaintiff's Exhibit P-71 for identification.)

By Mr. BERNSTEIN:

Q. Now, are you referring to memoranda that Mr. Nicht wrote to himself or to Mr. Green or to you, or what?

A. Should I pick it out for you?

Q. Would you please?

A. Here it is.

Q. Will you please read it, identify the document that you are talking about?

A. This is a memorandum written by Nicht, I assume, his signature is on it. Yes. No, there is no signature of Mr. Nicht.

Mr. RAICHLE: What is the date?

2070 The WITNESS: May 10, 1955.

By Mr. BERNSTEIN:

Q. In Exhibit P-71 it is identified with a tab as 5A-K., and the memorandum reads as follows: "The following points should be incorporated in the proposed selling contract with Greater Buffalo Press." That is abbreviated, G. B. P. "One: it must be contingent on our proposed new ICP contract." That refers to the International Color Printing contract?

A. That is what Nicht said.

Q. That is what Nicht said, right.

A. That isn't in here.

Q. "2) We must be exclusive sales agents." That is what Nicht said?

A. That is what Nicht said.

Mr. RAICHLE: If the Court please, this is an attempt to get through the back door what he could not get through the front.

The COURT: I understand that is one of these memorandums that we had squarely before me. I must be candid, I have very serious reservations on them, that these are proper here. How-

ever, I cannot resolve it. If, in order to progress with
2071 the case and the cross examination, you want to allude to them, I see no great harm. I am going to invite you

gentlemen to renew your discussions had with me before on these notes of Nicht's, as to their propriety in evidence. But if you want to examine Mr. Koessler, with a view of having him refresh his recollection of what Nicht talked about with him, or even perhaps wrote to him, for that limited purpose, I am going to hear this. I am aware of the other problem on the question of the propriety of this type thing in evidence in the case. If there was a jury here I am afraid I would have to meet it head

on. I think I can handle it otherwise. Do you understand, Mr. Raichle?

Mr. RAICHLE: I think I do, your Honor. I make this observation; that if this is a memorandum of Nicht's, as counsel claims it to be, if it has any probity at all, it is proof positive of the fact that these conversations and exchange of letters and communications between Nicht and Mr. Koessler were in the nature of negotiations. There was no contract, there was no meeting of the minds, there was no agreement, there was no performance. It starts right out with the heading: "The following points should be incorporated in the proposed selling contract."

The COURT: I understand that.

Mr. RAICHLE: May 10th is many months after the other—

The COURT: I suppose Mr. Bernstein's argument is that while there was some contemplation of a formal agreement at one stage, and there were negotiations, allegedly, back and forth, that even though it never came to bloom, that is, as a written document, it became a working practice. I suppose that is your premise?

Mr. BERNSTEIN: Well, when we get through with this witness' cross examination I have other things to go on with, we will find out.

The COURT: On this specific thing, I think to use this memorandum not in evidence to discuss the whole picture with Mr. Koessler, I will permit it. In other words, Mr. Koessler's recollection—it wasn't his idea, he said so twice—those proposals, if they were made by Nicht, he is gone, he can't tell us, were not his, Mr. Koessler says. To that extent, I am going to permit it. You have an exception.

Mr. STEVENS: I do.

The COURT: You object to it generally?

Mr. STEVENS: That is correct. I would like to add, in addition, that the whole exhibit now marked P-71 was an affidavit which was used in connection with the preliminary motions, to which NEA was not a party, and therefore we never had an opportunity to examine anything in connection with that affidavit.

Mr. BERNSTEIN: Might I add one thing, your Honor? I have grave doubts that the Government offered this particular memorandum of May 10, 1955 in evidence during its part of the case. Nonetheless, it does fall within the

same category of documents. I wanted the Court to understand that some of these have been offered, some have not been offered.

By Mr. BERNSTEIN:

Q. Now, with respect to 5A-K of P-71 for identification, I note the words on top "copy for W. J. K." Do you know whether or not you received a copy of that?

A. No, I didn't receive a copy of that.

Q. Did Mr.——

A. That doesn't say that. It says "copy for F. J. Nicht." You mean D. W.——

Q. That doesn't mean copy for W.J.K.?

A. No, I think the copy is meant for Mr. D. W. Gortatowski, and he was the general manager and vice president of the old Hearst organization.

Q. That says "note to D. W. J."?

A. That is a note Nicht made.

Q. On top of that it says: "copy for ——" do you make
2075 that out to be W.J.K.?

Mr. MOORE: May it appear on the record that counsel is referring to a hand written notation on the top of a typed memorandum.

The WITNESS: It looks like L.J.K.

The COURT: In any event, you never got a copy?

The WITNESS: I never got a copy. I never saw a copy until this anti-trust suit started.

By Mr. BERNSTEIN:

Q. Going back then to paragraph eleven of P-16; I asked you whether Nicht had communicated his wishes with respect to paragraph eleven orally or in writing, and I believe you answered it was all in that memorandum.

A. I thought it was. If it isn't, then he communicated that orally. Maybe it is there if you look.

Q. We will look and see. Yes, paragraph eighteen says: "Be sure to try to include clause in our contract with I.C.P. and G.B.P.——" International Color and Greater Buffalo Press—"regarding a sale of the company. The clause should specify we would have an option to buy or be given preference over
2076 others." Is that correct?

A. Yes.

The COURT: Mr. Bernstein, that phraseology sounds to me as though Nicht is dictating memos to himself for the future.

Mr. BERNSTEIN: That is correct, and Mr. Koessler says—

The COURT: Those are his own thoughts when he gets around, if ever, to dealing with Koessler.

Mr. BERNSTEIN: That is correct.

The COURT: "Don't forget to do this," you want me to accept that against Koessler in this law suit?

Mr. BERNSTEIN: I respectfully offer the evidence, your Honor.

The COURT: That is another point that was made originally, these are some business man's musings of what is going to come about.

Mr. BERNSTEIN: Defense counsel made that point. The Government's point is that this reflects the state of mind of one of the parties to the transaction.

The COURT: I am going to resolve that now. Sustained. I sustain those objections to all that type of proof. However, if you want to cross examine Mr. Koessler and ask him if he recalls something of this nature over the years as occurring in a talk with Nicht, that is all right. I am now resolving this area. The objections to those notes of Nicht, in light of what has been said, sustained.

Mr. BERNSTEIN: Very well, your Honor. We offer 5A-K as an offer of proof as to the contents.

Mr. MOORE: What is the number?

Mr. BERNSTEIN: P-71 for identification, 5A-K.

By Mr. BERNSTEIN:

Q. Mr. Koessler, would you please glance at this memorandum dated May 10, 1955, and state whether or not that refreshes your recollection as to conversations that you had with Mr. Nicht prior to June 13, 1955, concerning provisions which he wanted included in the contract between King and Greater Buffalo Press, Inc.?

A. What was that?

2078 Mr. BERNSTEIN: Would you read it back?

(Thereupon the last question was read by Reporter.)

The WITNESS: Well, why don't we take them one at a time?

By Mr. BERNSTEIN:

Q. Does it refresh your recollection with respect—

A. I don't know, I haven't read them all. Take one at a time. I can't say.

Q. Let's take the first one.

Mr. RAICHLE: Let him look at it himself. Wait a minute, let him read it to himself and tell us whether it refreshes his recollection or not.

The COURT: And you say in whole or in part it does, Mr. Koessler. Read it all, move along. Read it all, and if it refreshes your recollection, in whole or in part, please say that. If it doesn't refresh your recollection at all, say that.

The WITNESS: Well, some of these things I recall, 2079 other things I don't recall.

By Mr. BERNSTEIN:

Q. Tell us what you do recall?

A. Well, I can recall he wanted to be—talked about being exclusive sales agent.

Mr. RAICHLE: I couldn't hear you.

The WITNESS: Mr. Nicht talked about wanting to be an exclusive sales agent. That the contract should be for five or ten years, I recall that. That the prices should be based on units of four, the prices that he wanted. He talked about the possibility of him swinging over the printing to us for the Hearst newspapers, did that several times. I remember this, that King could make arrangements with other printers, that this didn't have to be exclusive.

By Mr. BERNSTEIN:

Q. What paragraph refreshed your recollection on that?

A. Paragraph sixteen.

Q. What did he say?

A. "Try to have an understanding that K.F.S. can 2080 make arrangements with other printers in the event they can do better for us because of geographic locations." And the clause about the option to purchase.

Q. So as a result of those discussions, you set forth, you wrote him the letter P-16, is that correct?

A. Right.

Q. Digressing for a moment; you recall that Nicht had many times made representations to you that he would get you the Hearst business, is that correct?

A. Yes.

Q. And tell us, did you have sufficient—how many runs did that account for, approximately?

A. It was a great many in those days.

Q. Did you have the facilities to do it at Dunkirk at that time with your existing contract?

A. All of it, no.

Q. Where would you have to do the rest—excuse me—did you think that he was at all serious in that statement about getting the Hearst business?

A. Well, yes, I thought he was serious. I doubted that he was able to do it. I certainly thought he was serious, that he would try.

Q. You were anxious for him to try, is that correct?

A. Yes, we were anxious to get Hearst's business if we could.

Q. Did you give consideration as to where you would
2081 print the Hearst business?

A. We couldn't have done it all, we didn't have the capacity. We could have done some in Dunkirk.

Q. Where with the others?

A. Practically all of it would have had to be done in Dunkirk. They only had one other paper that could possibly be done anywhere, San Antonio in Texas, that would be four years away.

Q. Now, inviting your attention to P-17—

The COURT: What is your point, Mr. Bernstein? You claim they bought the Wilkes Barre plant under some promise to get the Hearst papers' work?

Mr. BERNSTEIN: The Government's contention is that the whole transaction concerning Greater Buffalo's acquisition of the International plant and the opening of Sylacauga and Lufkin was all one deal, as a result of discussions with Mr. Nicht, whereby Nicht had in mind and believed—this is the Government's contention—Nicht believed that Mr. Koessler was tell-

ing him 'That you will be our exclusive sales agent, we
2082 will be the exclusive printer,' and for that reason Nicht wasn't going to put any road blocks in the way of the purchase of the International plant or the opening of Sylacauga or the opening of Lufkin, he was going to assist it because in Nicht's mind Greater Buffalo was going to be the printer, Nicht was going to be the seller, except for certain accounts they would allocate between them.

The COURT: He never got Hearst's business, did he, Mr. Koessler?

Mr. BERNSTEIN: I don't know. Did you ever get any of the Hearst business?

The WITNESS: Long after this law suit started we got some

of it, yes. There was not must to get in those days. That was not from Nicht or King Features, we got it ourselves.

The COURT: The other side of the coin is Mr. Koessler's version, that indeed he was growing, that he had the ability to take over old equipment, tired plants, refurbish them, 2083 run them cheaper, faster and better than others and, indeed, he is growing, he is looking for business constantly, and he buys this tired plant in Wilkes Barre, with the family in distress, with a large capital deficit, and he gives them a good price for it. Now, tell me what is inconsistent about good business, legal business, as I have described it and what you claim happened here?

Mr. BERNSTEIN: The difference is this; King was then Greater Buffalo's largest competitor——

The COURT: I know that. They were afraid he was going to storm them under by his ability plus his salesmanship in the feature game——

Mr. BERNSTEIN: That is right.

The COURT: ——not the printing game.

Mr. BERNSTEIN: It is the Government's position, the Government's contention, that both parties were wrong, that is why both parties were named in this suit.

The COURT: Why were they wrong?

2084 Mr. BERNSTEIN: For this reason, your Honor——

The COURT: What did they do? They might have——

Mr. BERNSTEIN: Here's what they did; beginning in——

The COURT: They might have thought about something.

Mr. BERNSTEIN: No, they did something, your Honor, they entered into an understanding, an understanding in the conspiratorial sense. A conspiracy or concerted action means a meeting of the minds between the parties to achieve a common objective.

The COURT: That is a question of fact for me to make findings on.

Mr. BERNSTEIN: That is correct. It is the Government's contention that both Nicht and Mr. Koessler had the common objective in mind that through the sale and purchase of International, neither King nor Greater Buffalo would any longer be competitors for the——

The COURT: Don't you think all the facts you have described are subject to two inferences, equal inferences; one, legitimate business practice, one of illegal business practice?

2085 Mr. BERNSTEIN: I do not, your Honor, but that is a legal question.

The COURT: It might be a legal question, I apply the fact-finding function. If I find that something hangs in the balance here, and I feel that the inference is—Nicht dead many years in the past—I feel there is a legal inference here that this was not a conspiratorial arrangement, whatever arrangement was made, do you agree that that inference has to be resolved in favor of the defendants here?

Mr. BERNSTEIN: I think the Government bears the burden of proving by a fair preponderance of evidence that there was concerted activity.

The COURT: I am looking for something a little crisper than I have had so far. I know you are not finished.

Mr. BERNSTEIN: Perhaps we will have it before the morning is over. This is a long story that has to be developed this way.

I am sorry.

2086 The COURT: I don't mind the time. I want you to know that I heard Mr. Koessler here, and it seems to me he is being extremely forthright, and I am looking for a little stigma to come in here that you can point to and say, 'There is something to hang your hat on.' Go ahead, please.

By Mr. BERNSTEIN:

Q. Mr. Koessler, you have Exhibit P-17 before you?

A. Yes. Do you want to show that to Mr. Raichle?

Mr. RAICHLE: I have it.

By Mr. BERNSTEIN:

Q. That is a letter you addressed to Mr. Nicht on January 17, 1956?

A. That is right.

Q. This is after Greater Buffalo has acquired the stock of International?

A. That is correct.

Q. And in the first sentence you say: "I am returning second draft of the proposed contract."?

A. Yes.

Q. You sent him a draft of a formal document, is that correct?

2087 A. No, he sent me the draft of the document. I told him I was returning the one he sent me.

Q. Did you return it signed or with notations or corrections or what?

A. I don't recall. It wasn't signed, I am sure.

Q. It was in the negotiation stage, is that correct? Look at the second sentence where you say: "The only thing I have changed is the exclusive commitments on the part of both parties."

A. Yes.

Q. What do you mean by that? Well, let's read the next paragraph too. "Our attorneys tell us this is dynamite. However, we consider the purpose and direction of our business relations shall be to secure to King Features and the Greater Buffalo Press the contracts and business which they presently hold and to aid and assist each other in securing such other business as is available, King Features to act as the selling agent and the Greater Buffalo Press as the producer." Now, does that refresh your recollection as to whether you made changes in Nicht's draft of the proposed contract?

A. I made some changes in that exclusive sales commitment.

2088 Q. Was that upon the advice of counsel, do you recall?

No. No, counsel didn't advise us on this. This is quite a story, I don't think you want to hear it.

Q. I would like to hear it.

A. Okay. These first letters of June—what is it—second?

Q. June 13, 1955.

A. —that we talked about and went over—

Q. P-16.

A. —everything in those letters were contrary to the interests of Greater Buffalo Press. We didn't want King as an exclusive agent. We didn't want to have anything to do with King other than to get some business on a competitive basis with him. They wanted these things. I wrote that letter to get Nicht off my back. I mean, he was the most tenacious guy. So I ran across Mr. Raichle, I remember it well, in the Statler Hotel. I told him about this problem. I said to him, "Frank, I don't think the things they want will be approved by the Law Department." And I said, "I wish you would let me know when you are going to be down in New York and I would like to go over with you to King Features, you tell them that."

Q. Which law department were you talking about?

A. The Hearst Law Department or the sales. Mr. 2089 Nicht and the rest of the people. So they ran a little luncheon as they always do down there and get everybody in an amiable mood. They had a half dozen people around there. They had Mr. — their legal counsel, I think his name was Mr. — an Irishman, McCluskey, and Nicht was there and he had all those other assistants, and Mr. Raichle told them he didn't think that this contract, based on the concepts of these letters, was the thing to do, that the Justice Department or the Anti-Trust Department, if they came across it at any time in the future, were not likely to approve of it, and the Hearst lawyers really took him to task about it. They said, "Do you mean to say that you can't sign an exclusive contract?" Mr. Raichle said, "No, I don't mean to say that, but with the way things are, and in view of the decisions, in view of the possibilities here, I don't think it's a wise thing to do and I am going to advise my client not to sign any contract along these lines." They were not satisfied with that, they had to get the opinion of some other lawyers. So they went and got their opinion and the opinion turned out to be what Mr. Raichle's opinion was, that it was something that shouldn't be done by King or by us. So we

called it off, at least we called it off. Then King got 2090 themselves another lawyer. It sort of sounds like the Joe

E. Lewis story, if you don't like your doctor get another doctor that lets you drink, things like that, that is what they did, they got themselves another lawyer, Mr. Archie Graustein. Mr. Graustein thought he could write a contract that would pass muster with the Justice Department. He wrote a contract or a proposed contract, let's put it that way, they sent it down to me. I didn't want to sign it, I didn't want to make any agreement. This is the reason for this letter, I sent it back to him.

Q. Thank you.

A. It went on for—it started in 1955, mind you, after their lawyers told them not to make any agreement. They kept needing me continually to get a new lawyer, 'We'll get some guy that knows about it, some guy with brains that can write one of these contracts that will get by.' This went on from 1955 until 1958. I was side-stepping, backing up, running away. We got a whole series of letters from all the Hearst executives from Berlin down to the bottom, 'get a hold of Koessler, make him sign this.' Do you want to see those letters? We've got them all here.

Q. I don't mind, if your counsel wants to offer them in evi-

dence as part of the redirect we'll be happy to put them
 2091 in the record. That is the purpose of your being here to-
 day, to find out. Mr. Nicht is dead. The only people we
 can find that out from is Mr. Nicht and yourself. It is important
 that the Court understand what the facts were. The facts are
 that as of January 17—

A. Mr. Bernstein, if you read all these letters you should have
 all these facts.

Q. That is right, but opinions differ as to the conclusions
 drawn from the facts, and that is why we need your explanation.

Mr. RAICHLER: Do you want to ask him a question? Go ahead.

By Mr. BERNSTEIN:

Q. P-17, dated January 17, 1956; I gather from what you
 just said that despite your reluctance and legal opinion that
 it is improper or it might be improper to enter into an exclusive
 agreement, you nonetheless returned the draft, striking out the
 clause concerning exclusive commitments, is that correct?

A. Yes. I didn't say we would sign it. I told him—I said, "This
 is something we won't sign."

Q. Right. Okay. You didn't tell him, 'Under no circumstances
 would we sign a contract,' you were continuing negotia-
 2092 tions with him, is that correct?

A. We did continue negotiations for three more years
 or two more years. That is, we were subject to listening to King,
 to continue negotiations.

Q. You had not broken them off, you were making revisions
 and corrections?

A. No, we were just saying, well, you know, 'If I get around
 to it, I will read it', we were stalling.

Q. All right. Now, you do say: "However, we consider the
 purpose and direction of our business relations—" that is, what
 you considered on January 17, 1956?

A. That is right.

Q. "—shall be to secure to King Features and the Greater
 Buffalo Press the contracts and business which they presently
 hold and to aid and assist each other in securing such other
 business as is available, King Features to act as the selling agent
 and the Greater Buffalo Press as the producer." Now, did that
 mean to you—did you intend to convey the impression to Mr.
 Nicht that as far as new business was concerned he was to be—
 the contract was to go with King Features and Greater Buffalo
 was to be the producer?

A. No, because we said there we had stricken out the exclusive commitments.

2093 Q. What did you mean by the language I just read?

A. What I meant by the language was that Greater Buffalo Press was going to hold on to its own accounts, not give them to anybody or let anybody get them, if they could help it.

Q. How about King?

A. King, on their part, were going to do the same thing.

Q. Greater Buffalo wasn't going to solicit King's accounts?

A. No, it didn't mean that. We did solicit them, we took them away. We had taken plenty by the time this letter was written in 1956.

Q. It didn't mean—your statement now is that when you used the language, "However we consider the purpose and direction of our business relations shall be to secure to King Features——" —I am omitting the next words— "—the contracts and business which they presently hold——", you did not mean to convey to him that you would not solicit those accounts?

A. No.

Q. Now, look at the next paragraph: "In this relation it may develop that the Greater Buffalo Press by mutual consent may be designated to act as negotiator or selling agent." What did you mean by that?

A. I meant we—if there was any business to be gotten, we wanted to sell it, we wanted to have it as our own.

Q. But you say "by mutual consent"?

A. Well, you know, that is a nice way of saying that if it isn't by mutual consent, nothing is going to be.

Q. But you meant to convey the idea that King and Greater Buffalo would agree on which contract Greater Buffalo would act as selling agent?

A. I meant we were not going to come to any agreement with them.

Q. You say in the next sentence: "In such cases——" —that is, a case where Greater Buffalo may be designated by mutual consent to act as selling agent or negotiator— "—if the Greater Buffalo Press is successful in securing the account the Greater Buffalo Press will pay to King Features a minimum of fifty cents per thousand copies on the account thus secured." What did you mean by that?

A. I meant that King and Nicht always claimed they spent years trying to line up some of this business, that if some of these things in the future, these so-called potential jobs, were ever to develop that they had helped get them, not in cooperation or coordination with Greater Buffalo Press, but on their account they had helped sell these newspapers on the idea of somebody other than themselves printing comics, if we got one we would honor it in some way to the extent of fifty cents a thousand, their efforts in the past, not their efforts as combined with ours, their efforts in the past.

Q. Then in the last paragraph you say: "Prices and wage scales will have to be adjusted to the increase in the price of newsprint and adjusted to the 4% labor increases we have been subjected to for the year of 1956." I assume that you made some corrections in the proposed contract to accomplish that?

A. Could have been, I don't know.

Q. Going to P-18—

The COURT: Another letter?

Mr. BERNSTEIN: From Mr. Koessler to—

The COURT: I want to take a break here. You can read that casually during the recess. I am going to give you time to rest, though, as well. We will take a short recess.

(Thereupon the court was in recess at 11:05 a.m.)

2096 (Proceedings resumed, pursuant to recess, commencing at 11:30 a.m.)

By Mr. BERNSTEIN:

Q. I show you P-18, a letter you wrote on October 31, 1956, to Mr. Nicht. Now, this is some ten months later, and you say: "Dear Frank: This, in substance, is the position of the Greater Buffalo Press, Inc., as expressed at our meeting, Tuesday, October 23rd." Does this refresh your recollection as to the meeting that you had with Mr. Nicht?

A. No, it doesn't refresh my recollection. I don't remember the meeting.

Q. You say in the first paragraph: "The Greater Buffalo Press will respect in every manner the comic printing accounts held by King Features Syndicate." Did that mean that you did not propose to solicit the business of those accounts that King then had under contract?

A. No.

Q. What did you mean?

A. It meant there were certain accounts that King had that you could not get away from them regardless of what you did. One of them I have in mind, that you might be interested in looking into, was in Washington, the Washington Post.

2097 Q. You say: "— will respect in every manner—", did you mean in every manner except you intended to let him know that you would nonetheless actively solicit those accounts he had under contract?

A. No, I meant we would exercise good intelligence, to know what jobs we could not possibly get, that we would not annoy either the newspapers or him by trying to get them. Do you want me to explain something about this business—

Q. Let's go on, I want to move along.

The COURT: You mean something unique about the newspaper business? You mean explain something that is unique about it?

The WITNESS: Yes.

The COURT: I would like to hear that.

The WITNESS: Well, in the comic printing business you have to get the features to go into the comics and King Features has rights to them, copyrighted features. They are very, very important to a newspaper. In the case of the Washington Post, the Washington Post was low on the totem pole, that is, they were the last paper in Washington. The Washington Star was the dominating paper in Washington. The Washington Post bought up the Washington Times Herald, which operated both the morning paper and an afternoon paper. The Washington Post is a morning paper. They bought the Washington Times Herald and when they bought the Washington Times Herald they bought or secured all the King Features editorial matter, the rights not only to the comics but the rights to all the columns, Walter Winchell, all the other columns that used to be or may still be important to newspapers. When they did that, almost overnight, within a—I guess it was overnight, the Washington Post became the dominant paper in Washington and still is. They run a couple hundred thousands more circulation than the Washington Star, and only because they got this feature material. The Washington Star is still a much better paper, in my opinion, news-wise, better edited, and locally they get better news. The only thing that differentiates these papers is the feature material, and the Washington Post got it, and that made

2099

them a dominant paper in Washington. We know that we can't go down to the Washington Post and solicit their comics on the basis of saving them say \$100 a week, and take a chance on losing this very valuable material that makes them the dominant paper. They wouldn't think of it, they wouldn't look at you. They might talk to you and be polite to you——

The COURT: You mean King would pull away the features?

The WITNESS: They could, they have said they would in instances.

By Mr. BERNSTEIN:

Q. Have they said they would with respect to the Washington Post?

A. That I don't know. They said they would in respect to other papers.

Q. Now, when you are talking about features, you 2100 don't mean only color comic supplements?

A. I mean all features.

Q. So that the power that the syndicate has over the features is not limited? If the syndicate is in the printing of color comic supplements, it has the opportunity to tie in the other features to the printing, is that correct?

A. Sell the feature package and the printing.

Q. You were concerned about that, insofar as King was concerned?

A. We certainly were concerned about it.

Q. Now, look at paragraph two of P-18. You say: "The Greater Buffalo Press will present King Features Syndicate with a competitive price, for its solicitation of new accounts." Do you recall that conversation with Mr. Nicht?

A. Well, I don't recall the conversation, but I recognize the letter.

Q. Paragraph three says: "The Greater Buffalo Press will share with King Features, in the manner it has in the past, in the benefits derived from new business, which it secures by solicitation on its own account." You mean that the business

which Greater Buffalo solicits on its own account, where 2101 Greater Buffalo has the contract with the newspapers, Greater Buffalo will share with King in the manner it has in the past, in the benefits derived from the new business, what did you mean by that, how were you going to share with King?

A. There were not too many new accounts to get. I'll give you one example, and it is the New Orleans Times Picayune. Mr. Nicht's memorandum refers to the fact that this is one of the accounts he wants to solicit, he wants to have exclusive rights to that. So I said, "Frank, we are going out and get that account on our own." He put up a big wail about the years they have spent trying to get it, the printing account, for their own, all the time they spent on it, the expense and everything, and he also said, "When you go get that business, if we can, we will tell them beforehand that if they give the printing to you instead of us it might increase the cost of the features, but even if you do get it, we can go back and increase the feature prices and get the money out of the features we should have got out of the printing." So to stop them from doing that, to annoy the customer, annoy the newspapers, annoy ourselves, we agreed in the case of this one paper to give them fifty cents a thousand.

Q. Is that what you had in mind when you wrote 2102 paragraph three?

A. Yes.

The COURT: Let me ask you this, Mr. Koessler. You were printing the comics for that Picayune?

The WITNESS: We were not, they were printing their own.

The COURT: Well, I mean if you got that. Did you also print these, I think you call them circulars, for the newspapers?

The WITNESS: Yes.

The COURT: These are the fold-ins you see?

The WITNESS: Yes.

The COURT: That had nothing to do with it?

The WITNESS: No.

The COURT: It had nothing to do with King?

The WITNESS: No.

The COURT: That was profitable?

The WITNESS: Yes.

The COURT: You were not looking to print comics, you had other items that you picked up along with that generally?

The WITNESS: That is right. They could be inserted inside the comic sections.

The COURT: Like Sears and Noah's Ark, and so forth?

2103 The WITNESS: Yes.

By Mr. BERNSTEIN:

Q. Then in paragraph four you define new business, you say: "Our definition of new business is that which no operator

in the comic printing business presently holds." Is that correct?

A. Yes.

Q. So that meant if NEA—strike that. The last paragraph says: "Such an arrangement in my view protects King Features in its present holdings, gives the syndicate an even break in the securing of new business, and guarantees King Features a share in any business secured through the efforts of the Greater Buffalo Press." That last part guarantees King Features a share in any business secured through the efforts of the Greater Buffalo Press, and you were referring to the fifty cents or its equivalent per thousand?

A. Referring to a few jobs. Not every one happened that way. I have in mind the New Orleans Times Picayune, which was one. They were very few.

Q. I show you P-64 in evidence. P-64 is a copy of a letter that you wrote to Mr. McDowell, the publisher of the Lima News in Lima, Ohio, dated October 11, 1956. You say:

2104 "Dear Mr. McDowell: Our newsprint supply at this time does not permit our presenting a proposal on printing of comics for the Lima News. Thank you for calling upon us and I trust we may have such an opportunity at some later date." Who was printing for the Lima News at that time?

A. King Features, I think.

Q. Note the notation on the bottom of that letter, there is in handwriting "Betty, mail this to F. J. Nicht, King Features Syndicate, 235 East 45th Street, New York, New York." Do you recognize the handwriting there?

A. Yes.

Q. Whose is it?

A. Mine.

Q. Who is Betty?

A. Betty was a girl that worked in our office.

Q. What were your instructions to her?

A. Exactly that.

Q. To mail a copy of the letter?

A. Yes.

Q. Why did you want to mail it to Nicht?

A. To make him feel good.

Q. In what way?

A. The Lima News is a paper of 30,000 circulation.
2105 We were not competitive, this was a ready-print, we could not have printed it under any circumstances and

made a profit on it. King Features had the whole setup, the so-called make-ready. We just didn't print these kind of jobs. So when a man wrote in, the easiest thing to tell him was that there was a newsprint shortage and therefore we could not print it.

Q. It was your way of saying you were not interested in the business, in a polite way?

A. Yes.

Q. You wanted to show Nicht that you were turning down business that he was then printing, is that correct?

A. I wanted to show—yes—I wanted to show Nicht that we were really being generous to him and letting him retain something that he would retain anyway.

Q. Yesterday you were shown by Mr. Raichle D-4, your—what is the date of that, Mr. Koessler?

A. October 7, 1958.

Q. That is what, please?

A. What?

Q. Is that your letter to—

A. No, this is Nicht's letter to me.

Q. Nicht's letter to you?

A. Yes.

Q. He says: "I regret to have to tell you that the agreement which we sent you under date of July 31 has been dis-
2106 approved by Mr. Berlin." Now, I show you—I ask to be marked for identification an agreement.

(Thereupon document referred to was marked Plaintiff's Exhibit P-72 for identification.)

By Mr. BERNSTEIN:

Q. An agreement between Greater Buffalo Press, Inc., and King Features, and I invite your attention to the last page, paragraph 14. Does that say: "This contract shall be effective May 5, 1958"?

A. Yes.

Q. Now, note the October 7, 1958 letter Mr. Nicht sent to you, he talks about "the agreement which we sent you under date of July 31." Now, is he referring to the same agreement, the May 5th agreement, or is there still another agreement that was—

A. No, that is the same agreement.

Q. He is referring to it. When he said "agreement which we sent you under date of July 31", he meant even though it was

effective on May 5th, he physically mailed it to you on July 31st?

A. I can't understand that. Let's look into this a little bit.

Mr. BERNSTEIN: Will you mark this for identification, please?

(Thereupon memorandum referred to was marked Plaintiff's Exhibit P-73 for identification.)

By Mr. BERNSTEIN:

Q. Let me show you a memorandum dated May 2, 1958, to Mr. Nicht from Mr. George C. Driscoll, and invite your attention to the first paragraph. He says: "Under separate cover I am forwarding you copies of Greater Buffalo contracts. These have been dated and signed by Walter Koessler." Now, by question is as to the date that you signed and returned to King Features the contract, P-72?

A. I signed this May 5th. It is obvious, I don't think I sent it to him, he sent Driscoll to get it, he was so anxious to get it. I would never have sent it back to him.

Q. You think Driscoll got it some time—Driscoll's memorandum is dated May 2, 1958, he said: "I am forwarding you copies of Greater Buffalo's contracts", what is your recollection? Is your recollection that Mr. Driscoll—

A. I don't recall how this happened.

Q. Would you please read the next paragraph and see if that refreshes your recollection?

Mr. MOORE: It ought to appear that you are reading from an inter-office communication of King Features.

Mr. RAICHLE: It is not in evidence.

Mr. STEVENS: Is that a marked document?

Mr. BERNSTEIN: Document Number 95.

Mr. MOORE: In the Government's possession.

Mr. STEVENS: Do we have a copy of 95?

Mr. BERNSTEIN: Yes.

Mr. MOORE: You are not positive.

Mr. FELDMAN: 95.

Mr. BERNSTEIN: So there is no misunderstanding among counsel, document 95 was submitted to counsel for all defendants prior to the trial of this action as a document upon which we would rely at the trial. It was not offered for identification nor in evidence at the Plaintiff's part of this case. It is now

being shown to the witness to refresh his recollection as
 2109 to the execution of the contract, and I question the
 witness about his own recollection, mindful of the
 Court's ruling—

Mr. RAICHLE: Does the document refresh his recollection in some regard or doesn't it? If it doesn't, that is the end of it.

Mr. BERNSTEIN: It is obvious that is the question, those were the words. I have asked the witness to read the second paragraph before he answers the question.

Mr. STEVENS: I would just like to make the statement that I am not sure that document was given to us. We do not have it now. We would like to have a copy.

The COURT: Here is apparently the point, Mr. Koessler, I am sure you probably have it in mind. There was a contract that didn't come off, I suppose the question is was there another one?

The WITNESS: No, there was not.

The COURT: No more written contracts passed between you, proposed, is that correct?

The WITNESS: Yes. This agreement here, Nicht refers
 2110 to it as July 31, the contract is actually signed in May.
 He apparently made a mistake.

The COURT: You say there was only one?

The WITNESS: One contract, that is it.

The COURT: That never came off?

The WITNESS: That is right.

The COURT: There was never a second one that passed back and forth?

The WITNESS: No.

By Mr. BERNSTEIN:

Q. Now, as to this contract that the Court refers to as never came off, that is, P-72, you did sign and deliver it to them, is that correct?

A. I signed that paper but I didn't consider it any agreement.

Mr. BERNSTEIN: May we submit this to the Court?

The COURT: That is the one that was rejected?

Mr. BERNSTEIN: That contract was signed May 1958, your Honor.

The COURT: By all parties?

Mr. BERNSTEIN: By all parties, yes, your Honor, and in

October it was canceled. From May to October it was
2111 in effect. That is different than saying it didn't come off.

It came off, it was canceled, that is the Government's view of it.

Mr. RAICHLE: It was never approved by the Board of Directors of either company or by counsel. It was conditionally delivered on both sides, if it was delivered at all by the Nicht side.

Mr. BERNSTEIN: That is what we are trying to find out from Mr. Koessler.

Mr. RAICHLE: The correspondence in evidence in the fall of 1958 makes that clear. I read those letters yesterday, you read them again today.

Mr. MOORE: That is in the Government's possession. This letter makes that clear.

The COURT: You can examine Mr. Koessler on it. He is a signatory to the thing. Go ahead.

By Mr. BERNSTEIN:

Q. Mr. Koessler, P-72 bears your signature, does it not?

A. Yes.

Q. And it bears the signature of Frank J. Nicht, General Sales Manager, does it not?

2112 A. Yes.

Q. It bears the signature of George C. Driscoll and Margaret Lutz, does it not?

A. If they mean anything, yes.

Q. Do you know Margaret Lutz?

A. No.

Q. She testified in this trial to being Mr. Nicht's secretary.

A. I now identify her. I didn't recall that.

Q. Mr. George C. Driscoll is the name of the man that appears—

A. He was a salesman for King.

Q. Did you know him?

A. Yes.

Q. Did you have a copy of this contract signed by Frank J. Nicht?

A. In our files?

Q. Yes.

A. I recall I did. We did, yes.

Q. Now, do you recall by looking at P-73, Mr. Driscoll's memorandum to Mr. Nicht, that in fact Mr. Driscoll did come

to Buffalo and spend most of the day and the night with you and was out to your home, went to dinner with your wife and you, do you recall that?

A. Yes.

2113 Q. And do you recall some mention during that conversation—do you recall Mr. Driscoll asking you for copies of the International Color Printing contracts with King?

A. No, I don't recall that.

Q. You don't recall that?

A. No. It says here I told him I didn't have them.

Q. Right.

Mr. RAICHLE: Never mind.

By Mr. BERNSTEIN:

Q. Did you have them?

Mr. RAICHLE: Testify from your recollection, what is the fact?

By Mr. BERNSTEIN:

Q. Did you have them, the International Color Printing contracts with King?

A. We could have had one in the safe somewhere, yes. I didn't personally have it.

Q. Were they with Joe Gorman in Wilkes Barre?

A. I think they were.

Q. Did you contact Joe and ask him to make up four or five copies to forward along to Mr. Nicht?

A. I don't recall that.

2114 Q. Do you recall—

A. Nicht had them, I don't know why he wanted me to tell Joe to make copies.

Q. Do you recall whether you invited Mr. Nicht to come up to Buffalo to take a boat trip?

A. No. I may have invited him, he never came.

Q. I mean do you recall sending that invitation?

A. I could have.

Q. Through Mr. Driscoll?

A. I could have.

Q. Do you recall whether or not Mr. Driscoll went down to your plant in Dunkirk?

A. That I don't know. He didn't go down with me.

Q. And note the last paragraph, do you recall—

Mr. RAICHLE: Wait a minute, the question is not noting the

last paragraph, ask him the fact, whether the document refreshes his recollection.

By Mr. BERNSTEIN:

Q. Mr. Koessler, would you note the last paragraph, please?

Mr. RAICHLE: He doesn't have to note the last paragraph.

The COURT: You mean read it, is that right?

2115 Mr. BERNSTEIN: Yes, read it to yourself, note it by reading it to yourself.

The WITNESS: "During my talk with——

Mr. RAICHLE: Wait a minute, I object to it.

The COURT: Read it. The question Mr. Raichle has is proper, does this memorandum of somebody else refresh your own recollection of an event? Somebody apparently had a version of something. By reading it is your own recollection revived?

The WITNESS: I don't remember.

Mr. RAICHLE: The answer is no.

Mr. BERNSTEIN: Excuse me——

The WITNESS: The answer is no.

By Mr. BERNSTEIN:

Q. What don't you remember?

A. I don't remember these references in this last paragraph.

Q. Do you recall whether or not Mr. Driscoll discussed New-
port News and Mr. Hornady with you?

A. No.

Q. Do you recall whether—do you recall the time that he was
at your house on this occasion?

A. Yes.

2116 Q. Do you recall whether you gave him the copies of
the contract at that time?

A. I don't recall giving him the contracts at all. I don't remember how these contracts got back to Nicht. All I know, they were a long time getting there, from 1955 until 1958.

Q. In any event, P-72 is dated effective May 5, 1958?

A. Yes.

Q. And Mr. Driscoll is talking about being with you some
time before May 2, 1958, or on or about May 2?

Mr. RAICHLE: I object to what Driscoll is talking about.

The COURT: Now, do you remember any visit with Driscoll?

The WITNESS: Yes, I visited with Driscoll.

The COURT: On the date mentioned by Mr. Bernstein?

The WITNESS: I don't recall the date.

Mr. BERNSTEIN: P-73 is offered in evidence for the sole purpose and limited only to establishing the report of the copies of the contract and the date.

Mr. RAICHLE: I object to it.

The COURT: I will look that over. I will reserve decision on it.

Mr. RAICHLE: There is a lot of other extraneous—

2117 Mr. BERNSTEIN: If counsel will stipulate those copies were forwarded on or about May 5, 1958, the exhibit will be withdrawn.

Mr. RAICHLE: I won't stipulate anything. I don't have to bargain for what I am entitled to.

The COURT: Let me look at that. I have never seen it before. Driscoll was an employee of Nicht's, right?

Mr. BERNSTEIN: Yes, your Honor, he is a salesman for Nicht.

Mr. RAICHLE: We concede the document got there anyway.

The COURT: I think you were suggesting before, Mr. Bernstein, that your line of proof is, I may be wrong, that there is another document that you believe existed between these people, one was rejected, another was floating around?

Mr. BERNSTEIN: The Government's contention of the facts now, in the light of Mr. Koessler's testimony, is that negotiations had been proceeding with Mr. Nicht as early as May of 1955, with respect to all of these items about exclusivity 2118 who was to take what customers, and fifty cents, those items of discussions had been proceeding up to 1958. In 1956, Mr. Koessler, upon advice of counsel, advised King that the exclusive feature was illegal. Nonetheless, these discussions continued and in 1958 it actually resulted in a formal contract signed by Mr. Koessler on one hand, and signed by Mr. Nicht on the other hand, that was actually in effect. In October there had been a formal cancellation of the contract or a formal advice that the contract had not been approved by the Board of Directors, therefore, as a legal proposition, was no longer legally binding on either one of the parties or had never been binding. The Government's contention is—and I want to examine Mr. Koessler along these lines, as to what the parties were actually doing as a result of their conversations and as a result of the understanding they had that had reached 2119 the point where they formally signed a formal contract. My question as to the July date—I was confused, I was trying to establish there really was no other contract. We have established that. We are talking about negotiations that had

been in the form of letters that stated these are the understandings among us up until 1958. In 1958 there was a formal document, it was effective from May until October, and in October it was cancelled. That is the Government's contention.

Mr. RAICHLE: Where are those letters?

Mr. BERNSTEIN: Would you mark this for identification, please?

(Thereupon document referred to was marked Plaintiff's Exhibit P-74 for identification.)

Mr. BERNSTEIN: P-74 marked for identification appears to be a draft of an agreement between Greater Buffalo 2120 Press and King Features. It is unsigned and it is undated, although in paragraph twelve it says: "This agreement shall run from September 15th—be effective as of September 14, 1967."

Mr. MOORE: Effective? Shall expire. Shall be effective—

Mr. BERNSTEIN: As of September 14th.

Mr. MOORE: "Shall run from September 15, 1957 to September 14, 1967, and thereafter."

Mr. BERNSTEIN: Paragraph 12 of P-74 says: "This agreement shall run from September 15, 1957 to September 14, 1967, and thereafter for successive periods of five years each unless terminated by written notice given by either party to the other to be effective as of September 14, 1967 or as of the end of any such five-year period and delivered two years prior to the date as of which it is to be effective." The Government does not contend this agreement was ever signed.

By Mr. BERNSTEIN:

2121 Q. I ask you, Mr. Koessler, was that an earlier draft of P-72?

Mr. MOORE: I suggest that the witness is going to have to read that as against the other contract. This has never been shown to us before, this draft.

Mr. BERNSTEIN: I will withdraw the question. Will you mark this for identification?

(Thereupon memorandum referred to was marked Plaintiff's Exhibit P-75 for identification.)

By Mr. BERNSTEIN:

Q. I show you P-75 marked for identification, a memorandum that bears the initials F.J.N. on the lower left corner, November 7, 1957, and ask you to please read the document

to yourself and then look at some of the notations in paragraph one, alongside of B, and then tell me whether you are able to state if this is an earlier draft of the agreement that you had considered?

Mr. STEVENS: Does P-75 have a number which we could use to locate it?

Mr. BERNSTEIN: 60.

2122 Mr. FELDMAN: P-74 is 60.

Mr. BERNSTEIN: I'm sorry, it doesn't have a number.

Mr. STEVENS: Thank you.

The WITNESS: I don't remember talking to Mr. Nicht about this, but this contract wasn't made by me, this was made by Mr. Graustein, the lawyer that was going to write up a contract that would conform to the Anti-Trust Laws.

By Mr. BERNSTEIN:

Q. You are talking about P-74 when you say this contract?

A. This is not a draft of a contract.

Q. You are talking about the piece of paper, P-74?

A. The piece of paper was drafted by Graustein.

Q. How about the contract, P-72, that bears your signature, who drafted that?

A. Drafted by Graustein?

Q. So then is it correct to say, based on your testimony earlier today about the advice you received from lawyers, that after they had consulted with Mr. Graustein, he drafted this contract, you signed it and returned it to Mr. Nicht, and then you learned that the Law Department of Hearst did not accept it, is that correct?

2123 A. No, I didn't learn anything. First of all, it was tentative, it wasn't an agreement. It was understood that I could submit this to our attorneys and I could submit it to the other people in our company, and the Nicht company could do the same. In the meantime, we considered the thing inoperative, it was, we didn't conform to it. I don't know whether they did or not, I don't think so. Then comes along this time when Nicht writes that letter and the thing is called off. We were happy to do it. Why was it called off? I don't know. I think maybe King Features, Hearst, got themselves a third lawyer who told them something different than the second lawyer told them, so they decided to call it off.

Mr. BERNSTEIN: Will you mark this for identification?

(Thereupon letter referred to was marked Plaintiff's Exhibit P-76 for identification.)

Mr. BERNSTEIN: P-76 for identification appears to be a letter from Mr. Nicht to Mr. Gortatowski, dated September 11, 1957, and it is offered together with P-74 and P-75 to 2124 establish the dates that this draft had been sent to Mr. Koessler and there was a discussion with Mr. Koessler concerning its contents.

Mr. RAICHLE: I don't mind the letter. I don't think the contract is admissible, the draft.

The COURT: Do you offer the draft?

Mr. BERNSTEIN: I offer the three to show the negotiations and conversations and discussions with the parties prior to the formal document.

The COURT: Mr. Raichle, he said he recognized some lawyer named something who drafted something. Overruled; I will receive it. Was it a New York lawyer, the fellow you were talking about?

The WITNESS: Yes, a Wall Street lawyer.

Mr. MOORE: I think if these are going in we should be entitled then to meet it with the other correspondence that went in at the same time. Mr. Bernstein is being quite selective.

The COURT: I expect a full disclosure on all documents having any bearing on this subject. I suggest you 2125 talk about it, and if there is more, you deliver them, Mr. Bernstein, anything that has a bearing at all.

Mr. BERNSTEIN: Yes, sir.

(Thereupon Plaintiff's Exhibits P-74, P-75 and P-76, previously marked for identification, were received and marked in evidence.)

Mr. BERNSTEIN: Will you mark these documents, please?

(Thereupon documents referred to were marked Plaintiff's Exhibits P-77 through P-88 for identification.)

Mr. BERNSTEIN: P-77 through P-88, your Honor, are documents that have been submitted to the Plaintiff by counsel for Greater Buffalo Press, Inc., with the representation that these are the documents that supplement the testimony of the witness with respect to P-74 in evidence. On that basis the 2126 Government offers them in evidence.

Mr. MOORE: I think the representation we made is that they are part of the correspondence which was offered by the Government.

Mr. BERNSTEIN: The Government offers them in evidence.

The COURT: I assume you want these in?

Mr. MOORE: Yes.

The COURT: Received.

(Thereupon Plaintiff's Exhibits P-77 through P-88, previously marked for identification, were received and marked in evidence.)

By Mr. BERNSTEIN:

Q. Now, Mr. Koessler, with respect to P-72, a contract that bears your signature and Mr. Nicht's signature; note paragraph one: "Press appoints Syndicate sales agent in the field of color supplement printing. However if Press makes direct sales, Press will pay to Syndicate (a) with respect to all sales by Press to the accounts listed in Schedule A, commissions at the rates specified in Schedule A,—" turn to Schedule A, 2127 Mr. Koessler, and note there we have the Dallas News fifty cents per thousand. Who is printing that today, if you know?

A. We printed it, we have always printed it, and we never paid King fifty cents a thousand.

Q. How about the Houston Chronicle?

A. We printed that from the beginning, still print it, never paid King fifty cents a thousand.

Q. How about the San Antonio Express?

A. We printed that from the beginning, still do, didn't pay him fifty cents.

Q. How about the New Orleans Times Picayune?

A. We paid him fifty cents a thousand for the reason I explained to you and to the Court.

Q. How about the New Orleans States?

A. There isn't any such paper.

Q. Was there at the time?

A. It didn't exist, we never printed it.

Q. That paper was inserted at King's request?

A. I presume so. Everything was King's request.

Q. How about the Shreveport Times?

A. That was one of the shakedown fifty-cent arrangements.

Q. What does that mean?

A. We took the job away from King and they said, "We are going to get our money back, we will go to the Shreveport Times and get the money out of the features that we didn't get out of the printing." So not to embarrass

the publisher and ourselves, we said, "All right, we will give you fifty cents a thousand."

Q. Insofar as the Shreveport Times is concerned, King had the contract with the Shreveport Times?

A. That is right.

Q. King had the contract not only for the printing but also to supply the features that were in the comic supplements?

A. I presume that is what they had.

Q. Do you recall?

A. I don't know, I never saw it.

Q. Do you know whether the Shreveport Times had any features other than King Features?

A. I think they did, I'm not sure.

Q. Just explain to the Court, please, what the procedure is; the customers in the newspaper business and the printing of color comic supplements, who gets the copyright from the syndicate, the newspapers or the printer?

Mr. RAICHLE: Nobody does, they get a license.

Mr. BERNSTEIN: Excuse me. I withdraw the question.

By Mr. BERNSTEIN:

Q. Who gets the license to the features, the newspaper
2129 or the printer?

A. The newspaper.

Q. And a newspaper sometimes has in the comic supplement King Features, NEA Features and some features of other syndicates?

A. Some of them have.

Q. Some of them have?

A. Yes.

Q. Some of them only have one syndicate's features in it?

A. Right.

Q. And some of them have several syndicates' features in them?

A. That is right.

Q. The newspaper has to get the license for those features and then he can engage Greater Buffalo Press or any other press to do the printing, is that correct, once he gets the license?

A. Yes.

Q. If he can't get the license, of course, the Greater Buffalo Press can't do the printing of the business nor any other printer?

A. That is correct, can't do the printing of those features if the publisher can't get the license.

Q. Did you make more than fifty cents a thousand on this Shreveport Times in the printing?

2130 A. I assume we did, yes.

Q. Approximately how much?

A. I don't know, I couldn't tell you. Some papers we made money on, some we didn't. Wound up overall making money. A very small amount, too, by the way, about 2 and 1/2 percent on our gross.

Q. Do you have any idea whether King was making at least fifty cents a thousand on these papers at that time?

A. They were making more than fifty cents a thousand, I am sure.

Q. Can you——

A. I'm not sure, I think they were.

Q. Can you explain this, Mr. Koessler; did you have any discussion with Mr. Nicht, or can you suggest from your experience in the printing supplement business, why would King forego the right to make the profit on the printing, get the whole contract and make more than fifty cents a thousand, why would he forego that right, let you do the printing and accept fifty cents a thousand?

A. We took the job away from him, he didn't have any control over it.

Q. He did have control if he denied them the features?

A. Well, control over taking those features out of the paper.

2131 Q. You are talking——

A. He couldn't sell them to anybody else in Shreveport, there is no other paper there.

Q. So in Shreveport he did not have control, he would not have been able to license the features if he took them away?

A. He could not sell them to anybody else, no.

Q. So therefore Greater Buffalo could have gotten the business without paying the fifty cents a thousand?

A. What do you mean we could have, we don't know. Nicht can go back and raise the price of these features, the publisher doesn't have to pay it.

Q. I understand that, Nicht can raise the price of the features. Nicht can deny licensing to the features?

A. That is right.

Q. If Nicht—I am trying to get the business reasoning—if Nicht denies licensing the features, then the newspaper is going

to print with Nicht and Nicht is going to make more than fifty cents a thousand on it?

A. The newspaper decided to give the contract to us. Now, maybe they didn't know, maybe they didn't think Nicht was going to stick them up.

Q. I see.

A. They found out afterwards. We have some letters to that effect, too.

2132 Q. How about the—when did this conversation with Mr. Nicht—

A. I don't know when it happened, some time in this period.

Q. Some time around 1958?

A. I presume so, before we began to print or after we began to print the sections.

Q. How about the Monroe World?

A. That is part of the Shreveport Times, that is the same deal.

Q. How about the Waterloo Courier?

A. We explained that, that was for the features, not for the commission on the printing.

Q. That is Waterloo, Iowa?

A. Waterloo, Iowa, yes.

Q. That is \$1 a thousand, we talked about fifty cents a thousand?

A. Yes. The difference between paying Nicht for features and just paying him a commission on the printing. His price on supplying the features was \$1.

Q. How much do you pay him today?

A. I think it's still fifty bucks.

Q. Fifty dollars or fifty cents?

A. Fifty dollars a week, I think. It isn't a question of how much per thousand, it is a flat price of fifty dollars a
2133 week.

Q. And the Elmira Telegram?

A. That was one of these feature arrangements.

Q. Who was printing that, who had been? Who had been printing it, King?

A. I don't recall. I think they were printing it themselves, if I remember.

Q. You offered to pay fifty cents a thousand for what purpose?

A. For the purpose of not having them raise the price of the features.

Q. Do you know whether they were using King's features?

A. Sure they were.

Q. How about the Wichita Falls Times?

A. That was part of the Harte Hanks papers.

Q. The Harte Hanks Newspapers?

A. That was the same thing, we took it away from King, they threatened to raise the price of the features. They actually did raise the price of the features to the publisher there. They got it from both of us.

Q. Are you still paying the fifty cents on Harte Hanks?

A. I think we are.

Q. How about the Calgary Herald?

A. I don't think we paid anything on that.

Q. Which of the papers on Schedule A are you still
2134 paying King for?

A. We are paying it on the New Orleans Times Picayune, the Shreveport Times, the Monroe World, which is part of the Shreveport Times, the Waterloo Courier, the Elmira Telegram and the Wichita Falls, and Harte Hanks papers. One, two, three—there are four papers out of the four hundred and some papers we print.

Q. Now, reverting to paragraph one (b) of P-72. Paragraph one (b) says that the parties agree "with respect to any new sale by Press to an account not listed in Schedule A—"—then there is an exception in there—"—and present accounts of the Papert Newspaper group a commission of fifty cents a thousand." In other words, by this document you were agreeing to pay fifty cents a thousand with respect to any new sales that Greater Buffalo made, with the exception of sales to Scripps Howard newspapers and its affiliated papers, and with the exception of those papers listed in Schedule A, which you pay in accordance with the amount listed in Schedule A, is that correct?

A. No, we went out and took business from King, we got it on our own account and never paid him anything.

Q. You had told him by this document that you would?

A. We didn't, we repudiated the document.

2135 Q. Note paragraph five: "Syndicate—"—that is King Features—"—agrees to place a combined total of 75% of Syndicate's supplement printing requirements as of the effective date of this contract (but not more than 75% of its supple-

ment printing requirements at the time) either with Press or with International Color Printing Company of Wilkes-Barre, Pennsylvania, or both." That is the same kind of provision that is in the agreement?

A. Nobody intended to honor that. King was running around to Eastern Color, they were running around to Star Color Press and to other people, trying to place their business with these other people, trying to get prices from them. They didn't intend to give us the business. They intended to give us the business, not the comic printing business.

Q. I note that paragraph five, in any event, has the same kind of provision they have in their contract with International—I withdraw the question, we will develop that later.

A. Let me correct the statement on the contract. We repudiated the so-called contract, the copy of the contract, after King did. They were the first ones to do it.

Q. Yes. That is what the——

2136 A. That is what the letter says.

Q. That is what the letter says. The letter——

A. And we were happy about it.

Q. The letter—it's D-4, or something like that—dated October 7, 1958, says: "I regret to have to tell you the agreement which we sent to you under date of July 31 has been disapproved by Mr. Berlin. In view of this fact I am sure that the Board will not approve or ratify it and, therefore, I must ask that you consider it to be no agreement." Then you wrote back to him and said: "I have had no opportunity to present this agreement to our own Board of Directors for their approval. Upon receipt of your letter I presented it to an informal meeting of the Directors and they disapproved. Since the agreement has not been approved and cannot be approved by either corporation, it must be considered void and no agreement." Is that correct?

A. Right.

The COURT: Mr. Bernstein, I think we will recess for lunch. Two o'clock, if you please.

(Thereupon the court was in recess at 12:35 p.m.)

2137 (Proceedings resumed, pursuant to recess, commencing at 2:00 p.m.)

JOHN WALTER KOESSLER, having been previously duly sworn, resumed and testified further as follows:

Mr. BERNSTEIN: Will you mark for identification a document numbered as 112, May 5, 1958.

(Thereupon document referred to was marked Plaintiff's Exhibit P-89 for identification.)

Mr. BERNSTEIN: I want for identification just the first page of this document.

Cross examination by Mr. BERNSTEIN: (Contd.)

Q. Mr. Koessler, P-89 for identification bears your signature and the signature of Mr. Nicht, dated May 5, 1958, and it says: "This is to confirm that while in our agreement with you of even date there is a provision that we will sell our printing services to new accounts at no lower prices than those 2138 listed in Schedule B plus fifty cents per thousand, it is also a part of the agreement—" —there are several provisions pertaining to that— "—will you confirm this understanding?" Do you recall the circumstances under which this was executed?

A. No. This is another one of these things Mr. Graustein wrote, some kind of a thing they wanted and—

Q. You signed it, sent it back to them?

A. With the contingency that, like the other thing I signed here, the so-called contract, it had to be approved by our lawyers and approved by the other people.

Mr. BERNSTEIN: I offer it in evidence.

Mr. RAICHLE: Let me see it? All right.

The COURT: Received.

(Thereupon Plaintiff's Exhibit P-89, previously marked for identification, was received and marked in evidence.)

The WITNESS: I think there is a reference to that in these letters that Mr. Graustein wasn't very sure that I would sign anything like that, but try him out anyway.

Mr. BERNSTEIN: I saw some reference to that.

2139 By Mr. BERNSTEIN:

Q. Can you explain this, Mr. Koessler; P-88 in evidence is a letter from Mr. Nicht to Mr. Gortatowsky, it is dated July 22, 1958, and he said: "Last April, when I obtained Mr. Koessler's signature to our sales contract, you suggested I consult Mr. Graustein." Is he referring to that May 5th contract that you signed in April?

A. Wait a second, Mr. Nicht wrote this letter. Am I supposed to account for what he wrote?

Q. No. I don't want to press it, I wondered. Those dates are confusing. I saw this letter for the first time this morning, I was wondering whether you could shed light on it?

A. No. Charge it up to Nicht, who you say was a meticulous note-taker.

Q. You don't know whether it refers to this contract or something else?

A. It refers to this one, there was no other one.

Mr. BERNSTEIN: Will you mark for identification document number 57, please?

(Thereupon memorandum referred to was marked Plaintiff's Exhibit P-90 for identification.)

2140 By Mr. BERNSTEIN:

Q. This is a memorandum dated July 26, 1957. I ask you to read the first paragraph, and I ask you whether that refreshes your recollection of a conversation that you had with Walter Koessler and Joe—excuse me—that you had with Mr. Frank Nicht and Joe Gorman at the Ritz-Tower Hotel concerning the pending contract?

A. I don't remember these meetings or what was talked about. Did I meet Mr. Nicht at the Ritz-Tower at some time or another, yes, I did.

Q. With Mr. Gorman?

A. Probably so. I don't recall meeting him with Gorman or whether Gorman was there.

Q. Do you recall ever, during these negotiations for this contract, Mr. Nicht saying to you that what he wanted first of all is the protection of King Features' business and that the contract will accomplish?

A. He was always saying that. He was certainly looking for that.

Q. Right. Do you recall him telling you that there should be a favored nation understanding?

A. What?

Q. A favored nation understanding?

A. I don't know what that means.

Q. You don't recall any conversation that his price
2141 was to be any higher than anybody else's price?

A. It wasn't. I should think it means his price should be lower than somebody else's.

Q. And—

A. To be a favored nation, which it was not.

Q. Do you recall his discussing with you a prospect list and the South Bend Tribune?

A. No. The South Bend Tribune is a paper that still prints its own comics.

Q. Do you recall any discussion with Mr. Nicht about it?

A. I have talked about printing the South Bend Tribune comics with many people, including him, including South Bend, too, by the way.

Q. You did talk to Nicht about it?

A. I could have, I don't recall.

Q. Do you recall discussing with him a commission on the Lake Charles business?

A. No. No commission paid, to my knowledge.

Q. Do you recall saying to him that Nicht will get a commission on Dallas, San Antonio and Houston?

A. I could have said that to him but the fact is we never paid it.

Q. And do you recall discussing with him at the Ritz-Tower Hotel a commission on all the Lufkin business and your saying that there was so little margin in the Papert business 2142 that you could not pay a commission on it?

A. Well, I really don't remember these individual things, no. The fact is that we didn't pay him any commission on the Papert business.

Q. Do you remember having a discussion—look at page two—do you remember having a discussion with him about closing the Peoria plant?

A. No.

Q. Look at the next to the last paragraph. Do you remember discussing with him \$1500 for a legal fee?

A. Yes. That is the one that he asked for—to get the opinion on whether the Hearst contention that their—to get an opinion on whether Mr. Raichle was wrong in his judgment as to advising us and them not to enter into some contract, this contract that was talked about.

Q. They submitted an invoice to you?

A. We paid half of the price of the opinion.

Q. And also paid your own legal fee?

A. Yes. I think they were paid.

Q. Because in this paragraph it refers to the fact that you had a bill from your own lawyer, you paid that, I take it, and

then you also paid half of the bill that King submitted
2143 to you?

A. I am sure.

Mr. RAICHLE: What happened was—let me tell it to you off the record——

Mr. BERNSTEIN: I don't mind putting it in the record, Mr. Raichle.

Mr. RAICHLE: What happened was that I took the position that the proposals emanating from King Features were subject to the criticism, and they might offend against the Anti-Trust Laws, giving my reasons for it. Their lawyer was firm in his assertions that such was not the case, and they asked Mr. Koessler, in my presence, if they got a third lawyer, an independent lawyer, so to speak, to give an opinion, would he then reconsider his refusal to go forward, which was based on my opinion, and this charge is evidently for the so-called independent lawyer's fee, half of it. Isn't that it?

The WITNESS: Yes.

Mr. RAICHLE: I might say, as a matter of interest—I won't say my embarrassment—to my somewhat amazement,
2144 the independent lawyer turned out to be a member of General Donovan's firm, with which I was formerly associated, and that gave rise to some conversation on the subject.

Mr. BERNSTEIN: I offer P-90 in evidence, your Honor. This has not been offered before. It is the same type of document, a memorandum made by Mr. Nicht, reporting the events of the conversation as of that date.

Mr. RAICHLE: I object to that. Your Honor ruled on that.

Mr. STEVENS: Objection on behalf of NEA.

The COURT: I have already ruled that out.

Mr. BERNSTEIN: I wanted to make the offer for the record.

The COURT: Sustained. I am going to let you refresh Mr. Koessler, if he has any recollection that is refreshed by the events allegedly recited in there.

Mr. BERNSTEIN: May the Government reserve the right to argue the merits of this later on more conveniently?

The COURT: I have passed on the merits before, and
2145 until I heard certain of the notes, which to me are clearly characterized as nothing but musings of Nicht, notes to himself of things to be done, I had a question. I don't have it any longer. I sustain the objection.

Mr. BERNSTEIN: I understood your Honor's ruling to pertain to those kind of documents where Nicht makes notes to himself as to things to be done. I was distinguishing this document as a note of what had been done, and the witness testifies that many of these things were in fact so, and Mr. Raichle confirms that these events were so.

The COURT: I meant to sustain the sweeping objection to that type of document in its entirety. Here is a man—Nicht is gone—here is a man that you can probe, using those, to see whether he would agree somebody's thoughts jotted down are his now.

Mr. BERNSTEIN: I don't want to burden the Court. I do want to preserve the Government's position. This document is
2146 being offered as a declaration of a co-conspirator on the grounds that it sets forth—if the conspiracy is proven, it sets forth the declarations of one of the parties to the transaction, as to what he said, what statements he made on a particular date, and what statements were made to him on that date by the—

The COURT: I ruled on that. If, after the evidence is closed, you can persuade me that there is something in the case that that proposal fits into, such as the conspiracy was continuing, that Koessler entered into it knowingly, purposely, with intent to participate, I will give you a chance to argue that. I don't want them coming in as business entries because I don't think they are.

Mr. BERNSTEIN: Very well, your Honor. Will you mark document 161 for identification?

(Thereupon document referred to was marked Plaintiff's Exhibit P-91 for identification.)

2147 Mr. BERNSTEIN: This is the same kind of document I offer it.

Mr. RAICHLE: Same objection.

The COURT: Same ruling.

Mr. BERNSTEIN: Please mark for identification a letter from Mr. Koessler to Mr. Houston Harte, June 17, 1954, identified as document 176.

(Thereupon letter referred to was marked Plaintiff's Exhibit P-92 for identification.)

By Mr. BERNSTEIN:

Q. Mr. Koessler, P-92 is a letter from you to Mr. Houston Harte of the Harte Hanks Newspapers in San Angelo, Texas.

You say: "Dear Mr. Harte: On my visit to Lufkin, Texas, on June 3d I signed a commitment to purchase 15,000 tons of newsprint from the Southland Paper Company beginning with January 1, 1957." Was that for the proposed Lufkin plant?

A. Yes.

Q. So that on June 3, 1954, was that the first time that
2148 you had made definite plans to open the Lufkin plant?

A. No.

Q. When was it?

A. 1953-1954 some time. This was when we were ready to open it.

Q. Were you ready to open it in 1954?

A. No. We were planning, we had to build a plant, make all our plans. That is when we planned for it, finally opened it in 1958.

Q. Right. So in the next sentence you say: "We are completing plans for the building to house the color plant at Lufkin." At that time you didn't have the building. What plans did you have to complete at that time, I mean aside from the building plans, what business plans?

A. Well, plans for the presses, what machines you were going to put in there. It takes a long time to plan the building.

Q. Were you doing that at that time?

A. Prior to that time, yes. Apparently they were complete then.

Q. In your next sentence you say this to Mr. Harte—who was he with relation to the Harte Hanks Newspapers?

A. He was the owner of a group of newspapers, proprietor, publisher.

2149 Q. When you say "group of newspapers", these were small runs?

A. Yes, relatively small.

Q. Did the combined group make a large run?

A. About two hundred some thousand.

Q. Was that considered a large run?

A. Considered a fairly good run.

Q. You tell Mr. Harte: "We have reached an agreement, verbal and tentative, with Frank Nicht of the King Features Syndicate, to print the sections that syndicate has under contract in the southwest area. It will be some months before we are operating in Lufkin. In the meantime, I would appreciate your limiting your agreement to King Features to its present period."

A. Right.

Q. "I will keep you informed on the progress of our operation at Lufkin. Thank you for the assistance you have given our company on this matter." What agreement were you talking about, that you told Mr. Harte about?

A. I told Harte not to sign up with King, we intended to go out and get his business ourself, which we did.

Q. You say in the third paragraph that you have reached an agreement, verbal and tentative in character, with Frank
2150 Nicht to print the sections that the syndicate has under contract in the southwest area?

A. That means we were talking about it.

Mr. BERNSTEIN: Will you mark this letter dated July 1,—

The COURT: Mr. Koessler, I gather from the tone of that letter that you had talks with this man before the letter followed?

The WITNESS: Yes.

The COURT: In other words, you thank him for his cooperation, you were referring to other—

The WITNESS: We would like to do his business individually, not through King Features, we hoped we would get some business from King too. We were looking for everybody's business.

The COURT: This was not your first communication with this man, you had chatted about business with him before?

The WITNESS: Mr. Harte? I am sure I had.

By Mr. BERNSTEIN:

Q. This wasn't the first communication with Mr. Nicht about opening the Lufkin plant, was it?

A. I don't know.

2151 Mr. RAICHLE: This wasn't a communication with Mr. Nicht.

The COURT: Mr. Bernstein, I wanted to know from Mr. Koessler whether there had been some talk, seeking this newspaper chain, whatever you call it, business, other than that written communication because the tone of the letter indicates there was and indeed there was, is that right?

The WITNESS: That is right.

By Mr. BERNSTEIN:

Q. And the Government wishes to make the point; June 17, 1954 was before Greater Buffalo purchased International, is that correct?

A. Yes.

Q. You were then in competition with King, is that correct?

A. Yes, this letter proves it, we did take the business away from King.

Q. You were in competition with King for the Harte Hanks Newspapers?

A. Indeed we were.

Q. You told Hanks that you had reached an agreement with your competitor, King, to print the sections that King 2152 has under contract?

A. I didn't say that, I said we talked to Nicht about printing some of his sections. That is what it says.

Q. "We have reached an agreement, verbal and tentative in character, with Frank Nicht of the King Features Syndicate to print the sections that syndicate has under contract in the southwest area."

A. Doesn't that mean exactly what I said, we talked to him. Verbal and tentative, maybe we will, maybe we won't.

Q. If Harte Hanks signed a contract with King to print the supplements, Harte Hanks would understand from this letter that Greater Buffalo would do the printing?

A. No. We say specifically here that we hope he wouldn't sign a contract, don't we?

Q. You say: "In the meantime, I would appreciate your limiting your agreement to King Features to its present period."

A. That is right, we didn't ask him to cancel his contract, we asked him not to sign a new one or renew one.

Q. If you had signed a contract with regard to King putting the business in the Lufkin plant, if you had signed that contract—

A. We didn't.

2153 Q. I know. If you had, then you would have no objection to Harte Hanks making a contract with King because Greater Buffalo would do the printing?

A. Have I got to make these conclusions, if I would do this it follows that would be true?

The COURT: I think that is subject to, perhaps, your interpretation. To me, particularly when there was other negotiations proceeding that, there was a request by Koessler to give him, Koessler, a chance to compete. That is one other interpretation, as I view it.

Mr. BERNSTEIN: Does your Honor wish to see the document?

The COURT: No. Now, you heard my last comment; is that

what you meant, that you wished them not to tie themselves up with King?

The WITNESS: Yes.

The COURT: You had proposals to make to them?

The WITNESS: Exactly.

The COURT: I don't want to dream up the answer, that is what I think it says.

The WITNESS: That is what the letter says, that is 2154 what I intended it to say.

Mr. BERNSTEIN: Will you mark these three documents as one exhibit?

(Thereupon documents referred to were marked Plaintiff's Exhibit P-93 for identification.)

Mr. BERNSTEIN: P-93 for identification consists of three letters. The June 17, 1954 letter being a copy of a letter from Mr. Koessler to Mr. James F. Chambers, Junior, Vice President and General Manager of the Dallas Times Herald in Dallas, Texas. June 21, 1954, being a letter from James F. Chambers, Junior, Vice President and General Manager of the Dallas Times Herald to F. J. Nicht; and July 1, 1954 being a letter from Mr. Nicht to Mr. Chambers.

Mr. STEVENS: Do those have identifying numbers so that we can locate them?

Mr. RAICHLE: No objection.

Mr. MOORE: Offer them without the comments on 2155 them.

Mr. BERNSTEIN: I offer these in evidence without the handwritten notations on them, your Honor.

Mr. STEVENS: May I see them, please? Thank you.

Mr. RAICHLE: We have no objection.

Mr. STEVENS: We have a general objection for NEA.

The COURT: I will receive them.

(Thereupon Plaintiff's Exhibit P-93, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: Will you mark for identification a memorandum of August 16, 1954?

(Thereupon memorandum referred to was marked Plaintiff's Exhibit P-94 for identification.)

By Mr. BERNSTEIN:

Q. Now, Mr. Koessler, inviting your attention to the period of August 11, 1954. This is prior to the Greater Buffalo acquisition of International?

A. August 16th.

Q. 1954, is that correct, and that is prior to Greater
2156 Buffalo's acquisition of the International stock, is that correct?

A. Yes.

Q. That is when you were competing with King, is that correct?

A. Yes.

Q. Now, I ask you whether you recall on August 11 or somewhere around that time Mr. Burns and Mr. Nicht met with you at your office and discussed a rate scale for the Toledo Youngstown and Erie runs?

A. Yes.

Q. And did Greater Buffalo turn those runs over to Greater Buffalo Press?

A. Turn them over to Greater Buffalo Press?

Q. Did Greater Buffalo print them?

A. Yes.

Q. For King?

A. Those were the ones he took away from Gorman.

Q. King had a contract with International that International would be its exclusive printer—

A. Right.

Q. Except for 75%?

A. I don't know what the contract was, anyway he took them away from Joe.

Q. He took the printing away, in other words, International was printing less by Nicht's turning over to
2157 Greater Buffalo for printing the Toledo, Youngstown, and Erie runs?

A. Sure they were printing less.

Q. International was doing less business?

A. We had nothing to do with International.

Q. Greater Buffalo was doing more business, printing business, by those three runs?

A. That is right.

Q. Greater Buffalo had taken the printing business from International by this transaction, is that correct?

A. Yes. No—taken it away—wait a minute, King Features took it away from International, we didn't. King Features gave it to us. King Features took it away from International, not us. We didn't have the power to take it away.

Q. You didn't have the power to take away any contract that any syndicate had with a printer?

A. No.

Q. You could induce the syndicate to do business with you rather than another printer, and in this case you induced King to do business with Greater Buffalo rather than with International Color Printing?

A. I think they induced themselves, they came to Buffalo to do this.

2158 Q. In any event, those three runs were then printed for King at Greater Buffalo?

A. That is correct.

Q. Now, do you recall when this happened, Mr. Koessler, do you have an impression?

A. Some time about this time, I haven't the least idea when.

Q. Do you recall that you then told them that nothing happened to change your plans regarding Lufkin, that you were going ahead with them, and you expected them to be under way by the latter part of 1955, and certainly by January 1, 1956?

A. No.

Q. You don't recall that?

A. No.

Q. What do you recall about your conversations with Mr. Nicht concerning opening Lufkin?

A. I don't recall that I discussed it with him. I didn't want to, I know that. I didn't want to talk to him about anything that had to do with Lufkin. We thought that was our own plans.

Q. Did Mr. Nicht at that time indicate to you what he had in mind in the south?

A. No.

Q. He did not or you don't recall?

2159 A. He did not. I don't recall that he did. I have no recollection of it, put it that way.

Q. This memorandum purports to report what Mr. Nicht indicated to you—

Mr. RAICHL: Wait a minute. I object to him telling what the memorandum purports to show. It speaks for itself or does not speak at all. Your Honor has ruled that it does not speak.

The COURT: No. This is the same area again, somebody else's notes. If Mr. Koessler has any refreshment of his recol-

lection by reading that, as I believe he has done, ask him specifically, paragraph by paragraph, if having read it it refreshes his recollection, does he agree with any of the terminology.

By Mr. BERNSTEIN:

Q. Mr. Koessler, do you recall whether or not you talked with Mr. Nicht about Eastern and World Color?

A. No.

Q. Do you recall whether you expressed any thoughts about—strike it out. Do you recall whether Mr. Nicht
2160 discussed with you, asked you if he could make a deal with you for the printing of the Atlanta National and Miami runs?

A. I don't recall it at that meeting. The only thing I recall, that he wanted to get the prices we would print Toledo, Youngstown and Erie runs for. He didn't give us the business at that time, as I recall. We gave him the prices at that time.

Q. Is the second paragraph true?

A. "We worked out——", but he didn't work it out at that meeting; we gave him prices. Nicht would never give you an answer about anything and he didn't give us an answer then. Ultimately we did get those runs.

Q. Ultimately was the second paragraph true?

A. Ultimately we got the Toledo, Youngstown and Erie runs, yes.

Q. Did you——

A. The third paragraph there, as I say, I don't recall that, but the information is completely wrong. We couldn't possibly expect to start a plant in 1955. We actually didn't get the plant started until 1958, so it must have been wrong.

Q. It must have been you had plans for opening at the latter part of 1955?

A. No.

Q. I am talking about your own recollection?

2161 A. Did we have plans to ourselves that we were not conveying to Nicht? Sure we did.

Q. You did have plans to open in the latter part of 1955?

A. No, we—no, we knew we couldn't open in the latter part of 1955.

Q. On June 17, 1954, you said to Harte Hanks that you were completing plans for the building to house the plant at Lufkin, and you say it will be some months before we are operating in Lufkin.

A. That is 1957 you are talking about.

Q. No, 1954, June 17th, I am referring to P-92.

A. It says beginning with January 1957 we signed a paper contract. Is that what it says?

Q. Right. You said it will be some months before we are operating in Lufkin; some months after January 1, 1957, is that what you mean?

A. Exactly, and many months.

Q. What is revenue from molding?

A. Well, it's a little private racket King Features operated. We developed methods by which we could assemble these features in one page on the press, and we didn't need King Features to mold extra mats for these newspapers. They used to—before our idea came along they used to mold a mat for every 2162 page on which a feature was changed. When we developed our method they didn't have to do that. So that we—the newspapers should have been saved a lot of money, but Mr. Nicht wanted to go on charging them for it whether we did it or not.

Q. Did he?

A. That is what the gentleman is talking about there, he did.

Q. And he discussed that with you on—well, is that part of the memorandum true?

A. I don't know, I haven't seen it.

Q. That is on the 9th paragraph down?

A. I haven't got it here.

Q. Excuse me.

A. Oh, apparently—I don't remember talking about this but if you want to know what the story was, he didn't want us to peach on him to the newspapers. Mr. Nicht didn't want us to peach on him to the newspapers because he was charging them for services he was not performing.

Q. And he told you about it?

A. He told me he was.

Q. And—

A. He—

Q. Did he ask you for transportation rates to Richmond and Bangor, in the next to the last paragraph?

2163 A. He may have. I don't recall that.

Q. Did you ever get the contract for the Kansas City

Star?

A. Yes.

Q. The St. Louis Globe Democrat?

A. Yes.

Q. Were they printed at Buffalo?

A. Yes.

Q. Did you ever transfer them to Lufkin?

A. Yes.

Q. When?

A. I don't know what year. I wouldn't tell Nicht the truth in these things.

Mr. BERNSTEIN: Your Honor, I offer P-94 in evidence as a similar type of document.

Mr. RAICHLE: Objection.

Mr. STEVENS: Objection.

The COURT: Sustained.

Mr. BERNSTEIN: Will you mark this, please?

(Thereupon a letter referred to was marked Plaintiff's Exhibit P-95 for identification.)

By Mr. BERNSTEIN:

2164 Q. Will you look at P-95 for identification, which is a letter you wrote to Mr. Nicht on August 27, 1954, which is eleven days after the memorandum that Mr. Nicht wrote on August 16, 1954, and does that refresh your recollection as to whether or not you might have been mistaken about your discussion of the Lufkin plant with Mr. Nicht?

A. What do you mean?

Q. Well, on August 27, 1954, you say to Nicht: "Dear Frank: I have not even discussed the Texas plant with NEA. It is our plan to develop the new accounts along the lines discussed with you, and to handle the accounts you serve in the manner in which we have talked about. This, as I see it, covers all the business in the area, present and future." On August 16, 1954, Mr. Nicht reports that on August 11th he spoke—

Mr. RAICHLE: Objection, he is reading from another memorandum that is excluded. Wait a minute, I object to this.

Mr. BERNSTEIN: This is cross examination.

Mr. RAICHLE: It is improper cross examination. He is trying to put in the record one of these Nicht memoranda, through the back door.

2165 The COURT: Have you asked Mr. Koessler about the specific time, date and thing previously that you are going to try and connect up?

Mr. BERNSTEIN: Yes.

The COURT: Do it again, referring to Nicht's memorandum and see if Mr. Koessler has a recollection.

By Mr. BERNSTEIN:

Q. Mr. Koessler, will you refer to the August 16, 1954 memorandum, P-94, and also your letter to Mr. Nicht, P-95—

A. What paragraph?

Q. I ask you to look at Paragraph three of P-94.

A. I get these mixed up.

Q. That is the Nicht memorandum.

A. What paragraph?

Q. Three.

A. Paragraph three. I never told Nicht we were going to open up any plant in 1955 or 1956.

Q. Did you discuss opening the Lufkin plant with him?

A. This says here—

Mr. RAICHLE: Don't read it.

The COURT: Did you discuss it? The only thing that is important presently is to jog your memory, if it does, that some event did happen that you recall yourself.

The WITNESS: I don't recall discussing it. The only thing I remember about this meeting—they are talking about August 11, is this Toledo, Youngstown and Erie run.

By Mr. BERNSTEIN:

Q. Look at P-95, your letter to Mr. Nicht. You say: "I have not even discussed the Texas plant with NEA."

A. It means I didn't talk to him about that or with NEA about it.

Q. You are writing Nicht, you say, "I haven't—"

A. He apparently wrote a letter to me, asked me, "Have you talked that over with NEA?" I told him no.

Q. What were you talking about, have you talked what over with NEA?

A. I don't know what question he asked me. He apparently asked me if I had discussed my plans in Lufkin, the Texas plant with NEA, and I told him, "No, we haven't discussed the plans with NEA of our Texas plant."

2167 Q. You say: "It is our plan to develop the new accounts along the lines discussed with you—"?

A. Yes.

Q. What lines did you discuss with King on or about August 27, 1954, as to new accounts?

A. It could have been we would like to get some of his business.

Q. Do you have a recollection of what it was?

A. Not specifically, no. We were looking for business to put in that plant, he had some.

Q. What plant?

A. In the Lufkin plant, the Texas plant.

Q. You were discussing putting in business in the Lufkin plant with Nicht?

A. That's what it could have been. That's what this letter refers to. Sure we did.

The COURT: Mr. Koessler, these are some notes of this fellow, Nicht's, that are being read to see if it refreshes your recollection. On or about the time that he mentioned these things did he know about the plans for Lufkin from you?

The WITNESS: He didn't get them originally from me. He got them through the grapevine, that we were starting
2168 something. I didn't want him to know.

The COURT: In other words, I take it you are saying that you became aware of the fact that, while you hoped it was secret, it was indeed not, at least with Nicht?

The WITNESS: Exactly. Mr. Bernstein is trying to point out that—trying to say I discussed this matter with Nicht on what date the——

Mr. BERNSTEIN: August 11, 1954.

The WITNESS: —that my recollection can be bad. It isn't necessarily so. I couldn't discuss it with him at that time. I could have discussed it with him prior to that time.

The COURT: If he had challenged you with the fact he knew about it?

The WITNESS: Exactly.

The COURT: Had you taken title to land down in Texas for the plant?

The WITNESS: We had talked seriously about it. We hadn't taken title to it.

The COURT: Was somebody negotiating for you?

2169 The WITNESS: No, we were doing it ourselves.

By Mr. BERNSTEIN:

Q. You had signed a commitment for paper in June of 1964?

A. That is right, the Southland Paper Company.

The COURT: I suppose that is one of the possible sources of the news in the business?

The WITNESS: Yes, you can't keep these things secret.

The COURT: A big order for newsprint like that I suppose gets around in the business?

The WITNESS: Indeed.

The COURT: You say to me that you did not discuss it directly at that time?

The WITNESS: In the beginning.

The COURT: Yes, with Nicht?

The WITNESS: That is right. They had their own plans to build a plant down there. That is referred to in many of these memorandums. We wanted to get in ahead of them if we could. In one of the memorandums they make some statement that they beat us to the post.

Mr. BERNSTEIN: Will you mark document 170 for 2170 identification, dated October 7, 1958?

(Thereupon document referred to was marked Plaintiff's Exhibit P-96 for identification.)

By Mr. BERNSTEIN:

Q. Do you recognize P-96 for identification, Mr. Koessler?

A. Yes.

Q. What is it?

A. It's a payment we make on the Buffalo Evening News business.

Q. What?

A. A payment that we make on the Buffalo Evening News business.

Q. And what were the circumstances of that payment, and to whom do you make it?

A. King Features was trying to get that business and we were too. We got the business, we got the contract. King Features, when they lost the contract, told me, and they were going over to the Buffalo Evening News to Mr. Kirkover and remind him that the contract they had for the features, for the King Features, was not to print on Saturday, but to print on Sunday, and that he planned to print this comic section on Saturday, and they were going to get some more money from him or get it from us. It is another one of these shake-downs that Mr. Raichle talked about.

Q. How did he bill you fifty cents a thousand on that run? Did he call it mats or what form did it take?

A. It says King Features. I don't know. I haven't got the bill. I suppose so much a thousand.

Q. Bill Hammond is an employee of Greater Buffalo?

A. Right.

Q. This is a memorandum from Bill Hammond of your company to somebody else in your company stating that King Features will bill Greater Buffalo fifty cents a thousand on the Buffalo News, is that correct?

A. Yes.

Q. That is dated October 7, 1958?

A. That is right.

Q. With regard to P-72, this contract that was canceled in October, 1958, at or about the same time, the exact date of the cancellation letter of that written contract was——

Mr. RAICHLE: I thought it was October 27th.

By Mr. BERNSTEIN:

Q. I'll get the exact date later. Some time on or about October 7, 1958, that contract, P-72, was canceled, 2172 correct?

A. Yes.

Q. And——

Mr. RAICHLE: I object. Wait a minute, I object to the conclusion "canceled," it wasn't ratified by the Board. The letter speaks for itself. You like to say "cancelled," which implies it was at some time in force. It was not.

Mr. BERNSTEIN: That is a legal determination for the Court.

The COURT: Apparently the two leaders, so-called, Nicht and Koessler, contrary to what is customarily done in corporate work, signed a proposed contract and then it was put through the mill, as it had to be legally, and it was flattened out to nothing.

Mr. BERNSTEIN: The Government——

The COURT: Each side recognized they could not control the Board of their respective corporations, they both said therefore it is finished.

Mr. BERNSTEIN: There was a lapse of time between 2173 May of 1958 and October when that occurred.

The COURT: I know nothing about it. I think I said before that the principals got the thing rolling with signatures and then they both were not able to deliver or could not deliver the corporate authorization.

By Mr. BERNSTEIN:

Q. Now, on October 7, 1958, King Features sent you a bill for fifty cents a thousand on the Buffalo News, is that correct?

A. I assume so. Have you got the bill there?

Q. And P-72, the agreement that the Court was referring to, provides in paragraph one (b) that: "With respect to any new sale by Press to an account not listed in Schedule A" you would pay a commission of fifty cents per thousand, is that correct?

A. This was called off. Yes, we talked about this tentatively. We—I signed the thing contingent upon the approval of the attorneys and the other people.

Q. So this was a payment for a new account not listed on Schedule A?

A. No, it wasn't.

Q. You explained why the payment was made, but 2174 this newspaper wasn't listed on Schedule A?

A. No.

Q. All right, that is all.

A. I'll put it to you shortly, Mr. Bernstein. While King Features may have canceled the contract, they didn't cancel the shakedown.

Q. That continued?

A. It continues now, under the consent decree it continues and can continue.

The COURT: You mean because these people have the assignment of these licenses to use these cartoons, these comics, that those persons, represented by Brownell here, are still extracting sums from you?

The WITNESS: They haven't recently. This consent decree does not stop them from doing it.

The COURT: There isn't any known abuse that you know of?

The WITNESS: Since that time, no.

The COURT: I have in mind my discovery that after I limited your Sylacauga operation, at least to my satisfaction, I 2175 found somebody was taking what I thought was an unconscionable advantage of my own efforts to feel my way a little bit in this case. You don't represent to me they are doing it now?

The WITNESS: No, but they could. They could and it would be legal, as I understand it.

The COURT: I wanted to be aware of whether there was anything going on that I didn't know about.

The WITNESS: Could I explain?

The COURT: It isn't necessary. I understand what you mean. I wondered if you were actually kicking in at this time because of some action put through this Court. You mean it is a potential of that?

The WITNESS: That is right.

(Thereupon document previously referred to was marked Plaintiff's Exhibit P-97 for identification.)

By Mr. BERNSTEIN:

Q. Document number 98 is dated February 26, 1958. I ask you to note the fifth paragraph down, where the newspapers are identified, and ask you whether or not it was a fact that on or about February 26, 1958, King Features was billing Greater Buffalo Press each week for the following runs in the amounts there indicated?

A. I don't know. I have told you that is the Harte Hanks papers, we were paying fifty cents. You asked that before and I said yes. The whole group of papers are the Harte Hanks, I said yes. The Elmira Telegram, yes. The Shreveport Times, I said yes. I said yes on the Wichita Falls paper, which is actually the Harte Hanks group. I said yes on the New Orleans Times Picayune. The New Orleans States, no, because no such thing existed. On the Calgary Herald, no. On the Monroe paper, yes, because that is part of the Shreveport thing. On the Waterloo Courier, so-called, it wasn't—I think it was fifty dollars a week and that was to release some features. So the shakedown adds up to their total of \$563 a week, plus some more items, including the Buffalo Evening News.

Mr. BERNSTEIN: I offer P-97 in evidence on the same basis as the other documents.

Mr. RAICHLER: Same objection.

Mr. STEVENS: Objection.

The COURT: Same ruling. Let me see that last offer, will you? Who is R.K.R.?

Mr. BERNSTEIN: Mr. Rogers of King Features, Mr. Nicht's successor.

The COURT: Is he alive?

Mr. BERNSTEIN: Yes.

The COURT: I am trying to recall. We had Mr. Rogers here, haven't we?

Mr. BERNSTEIN: No, your Honor.

By Mr. BERNSTEIN:

Q. I show you D-6B in evidence, which are the Answers to the Interrogatories of the Defendant Hearst Corporation. You testified to this on direct examination that these were the newspaper contracts that Greater Buffalo took away from King Features, is that correct?

A. These interrogatories are something that the Justice Department got themselves. The information came from King Features on your solicitation.

Q. Right. You were asked questions about that?

A. I hope it's right. You've got it, they gave it to you, and I can't contradict it.

Q. In the Answer to the Interrogatories Hearst said these were the newspapers which had contracts with King Features which were canceled, and by reason of the newspapers
2178 entering into Greater Buffalo Press. You have no reason to doubt it, is that correct?

A. No.

Q. Now, Mr. Raichle asked you about that to show that you were taking business away from King. I ask you to identify which of those contracts you paid some commission to King Features on?

A. Well, we start off again with the Harte Hanks group, the first five papers.

Q. The first five papers listed in the Answers to the Interrogatories on D-6B?

A. Yes, We don't pay anything to the Dallas Times Herald. The Erie, Pa. Times I'm not familiar with, I can't recall. Lake Charles, we don't. Monroe and Shreveport, I said we did. Wichita Falls I said we did. Austin, Texas, we don't. Port Arthur, we don't. Waco, we don't. Birmingham, we don't. Houston, we don't. Miami Herald, no.

Q. The papers that you don't, you took away on November 6, 1960 and '63, '62, '64, is that correct?

A. Took them away in 1960—well, wait, it starts back in 1959, took these.

Q. Which papers? Let's take the earliest?

A. The earliest ones are 1955, some of them are '56.

Q. When you say "the earliest ones" you are talking
2179 about the contracts listed on Interrogatory Number 1, as early as 1955?

A. It says cancellation date.

Q. I am trying to ascertain—you have identified those papers for which you do not pay any commission to King—would you tell us the cancellation date of the newspapers that you do not pay a commission to King?

A. That we do not?

Q. That you do not.

A. The Dallas Times Herald, 1959. Lake Charles, 1957. Austin, Texas, 1960. Port Arthur is 1960. Waco is 1960. Birmingham is 1963. Houston is 1963. Miami is 1964. We have more—

Q. Those are other answers, that is another question. I show you Plaintiff's Exhibit P-28 in evidence. P-28 is the October 20, 1955 contract between the Greater Buffalo Press and NEA, entered into at or about the time that Greater Buffalo bought the Buffalo Color Press, is that correct?

A. Right.

Q. I invite your attention to paragraph three on page three—

A. Yes.

Q. And that provides for printing to be done for NEA at either Buffalo, New York or Dunkirk, New York or at 2180 the plants now being constructed at Lufkin, Texas and Sylacauga, Alabama?

A. Right.

Q. Were they actually under construction at that time or did you mean in the process of being?

A. In the process; we were dreaming about it.

Q. This contemplated that you would print for NEA at those plants?

A. Yes.

Q. Did you have any discussion with—strike it out. The contract between King and International, P-23 in evidence provides that International would be the exclusive printer for King, is that correct?

A. I don't know. Does it say that in here?

Q. I invite your attention to page two, paragraph fourth. It says: "While International is printing at least the minimum percentage of syndicate's supplement printing requirements as outlined in paragraph 2d above, International agrees that it will not produce or print comic supplements for any organization other than the syndicate, and in no event without the written consent of the syndicate."

A. Joe Gorman made this contract, I had nothing to do with it, and it apparently says here that if King gives him 2181 seventy-five percent of their business, they will be

King's exclusive printer. But I didn't make this contract or didn't sign it or have any discussion about it.

Q. I show you P-90 for identification, which purports to be Mr. Nicht's memorandum of July 26, 1957, of a conversation with you. I invite your attention to the eighth paragraph down.

A. Do I remember talking this over with Nicht? No.

Q. Do you remember Nicht's saying to you that he did not want to change the International Color Printing contract because in the International Color Printing contract there is a clause which International would have to obtain Nicht's consent before any other business is placed in the Sylacauga plant?

A. I don't remember talking about this at this time. I do recall Mr. Nicht in his conversations somewhere along the line with Graustein, Nicht was insistent that we could not—that the Sylacauga operation—in the Sylacauga operation we were not going to be able to print for NEA, they had to be out. We could not print for his arch enemy NEA.

Q. What was your discussion with Mr. Nicht?

A. I told him no; we were going to print for NEA and print for anybody else.

Q. Did you tell Mr. Nicht that you had a contract to 2182 print for NEA then?

A. Mr. Nicht knew we had a contract to print for NEA.

Q. In Sylacauga?

A. Certainly, he knew we had a contract to print for NEA.

Q. He didn't know whether the contract obligated you to print in Sylacauga?

A. I don't know what he knew. I think he knew that.

Q. You never showed him the contract?

A. No, nor never discussed it with him.

Q. What were the considerations for organizing Dixie Color with respect to the operation of the Sylacauga plant?

A. What?

Q. What were the considerations that you gave to using Dixie Color for the operation of the Sylacauga plant rather than some other corporation or rather than International?

A. I don't understand what you said.

The COURT: Why did you select the name?

The WITNESS: That was my name.

By Mr. BERNSTEIN:

Q. Dixie Color?

A. Yes, sort of goes with the territory down there.

2183 Mr. RAICHLE: You call that localizing one's self.

The COURT: Yes, I know. It is sometimes helpful, particularly if you are from the north.

The WITNESS: That is right. I found out they don't even observe Decoration Day as a legal holiday down there.

The COURT: We don't observe Lincoln's Birthday in the Federal Courts, the Federal Courts are in Alabama, too. We will take a short recess.

(Thereupon the court was in recess at 3:15 p.m.)

(Proceedings resumed, pursuant to recess, commencing at 3:45 p.m.)

By Mr. BERNSTEIN:

Q. Mr. Koessler, with respect to the International Plant at Wilkes Barre, have you been going there often?

A. No.

Q. Give the Court an idea of how often during a year?

A. I have been there twice since we bought it. That is how many years?

2184 Q. Since 1955, twelve years. Twice in twelve years?

A. Twice in twelve years.

Q. Had you looked at the plant before you bought it?

A. No.

Q. And how about Buffalo—how about the Buffalo Color Press plant when you bought that, did you look at it?

A. We were familiar with that, it was in Buffalo.

Q. You had seen it?

A. Yes.

Q. And did you use any of the equipment that was in the Buffalo Color Press?

A. A couple pieces.

Q. Some were sold to New Mexico?

A. We sold—not to New Mexico—to Mexico.

Q. What did you do with the rest of it?

A. Junked it.

Q. Was most of it junked?

A. Most of it.

Q. Shifting back to the International Plant at Wilkes Barre, I understood you to say that you were anxious to get Hearst's

business and King was promising you that he would attempt to get Hearst's business, is that correct, before the sale?

The COURT: Nicht, you mean?

Mr. BERNSTEIN: Excuse me.

2185 The WITNESS: Nicht held that out as one of the offerings, potential offerings.

By Mr. BERNSTEIN:

Q. When did you begin to put this commercial work in International?

A. Well, we put—after we took it over.

Q. In 1955?

A. I think so, yes. '55, '56, '57, all the way along the line.

Q. Had you had plans for doing that before you bought International?

A. Yes.

Q. Could you run that plant commercial, without any color comic supplements?

A. I think so.

Q. And you said something about a percentage—

A. Wait, let's reconsider that. We could run International with the commercial business and with the business we put down there. Sixty percent of the business International does now comes from Greater Buffalo Press, not from King Features, that includes commercial and comic business.

Q. Let's take 1955, before Sylacauga was opened, what percentage of the business came from King Features at 2186 International?

A. You have to talk to Joe Gorman about it, he is the one that has the figures.

Q. Were you aware then in 1955 and 1956 how much of King's business was in the International Plant?

A. I was not aware in total, but I knew generally what newspapers they had, what newspapers we had, I never added it up to find out what it amounted to.

Q. Now, the Buffalo Color Press equipment—that contract, P-27, was signed October 20, 1955, and just to summarize it, is this a correct summary of what had occurred before that; you had discussions with somebody from Buffalo Color Press with regard to buying that business for some time before that, is that correct, some time before October 20, 1955?

A. Sure.

Q. With whom did you have the discussions?

A. Leon Herman.

Q. How about Herbert W. Walker, did you discuss it with him?

A. Possibly so.

Q. How about Mr. Earl Anderson, did you discuss it with him?

A. I don't recall that we discussed it with Anderson. He was not in command then, Walker and Herman were.

2187 Q. Can you give us some idea of how long a period of time the discussions had gone on?

A. Oh, they were not serious discussions; conversations like this, "We don't understand why you want to run that place down there."

Q. General preliminary talks would you describe them as?

A. I suppose.

Q. How long—

A. Social, most of them social, social occasions.

Q. Most of these were with Mr. Herman?

A. Most of them were with Mr. Herman.

Q. These were when you would meet Mr. Herman in connection with business you were doing for Buffalo Color Press at your plant?

A. That is right, and helping him out.

Q. You had joint labor negotiations with him?

A. Yes.

Q. Would you discuss it with him on the occasions that you were together then?

A. We would mostly discuss it when the plant broke down, we had to go over and fix it up.

Q. And when would you say the talks became more serious, more formal, what you would call negotiations that would lead to price and terms and conditions?

A. I don't recall that. There came a time when Leon
2188 Herman recommended to the people up in Cleveland, Mr. Walker, they ought to sell the plant. I mean it got to the point they were not making money on it, the machinery was in bad shape, it was getting to be an expensive thing. Mr. Herman made this recommendation.

Q. As far as your recollection, you have no event that you can pinpoint in your conversation with Mr. Herman when they changed from the social conversation stage that was something more serious?

A. No, except Mr. Herman had a heart condition, he was being more troubled with it, and I think that was largely in his mind, that he would not be able to carry it on any longer.

Q. Would you please refer to P-27, the contract between Greater Buffalo Press, Inc., and Buffalo Color Press, Inc. Those names are a little confusing, almost identical, your company is The Greater Buffalo Press, Inc., and NEA's company is Buffalo Color Press, Inc.

A. Yes.

Q. Now, in paragraph three, page two—

A. Yes.

Q. Buffalo Color Press agrees to turn over to you all Buffalo Color Press' supplement printing; for NEA Service of Cleveland, Ohio, a named customer which also places orders 2189 for the named customers shown in Appendix B, that is the newspapers, is that correct?

A. Let's look.

Q. Yes, these are all newspapers. What I want to understand is that thereafter did NEA Service continue to have the contracts with the newspapers on Appendix B or were those contracts with Greater Buffalo Press?

A. They held the contracts. They merely contracted to us to do the printing, they held the contracts with the newspapers.

Q. How about—

A. Still do.

Q. How about United Features Syndicate, did Greater Buffalo Press have the contract or did NEA have the contract?

A. NEA didn't have the contract, as I remember. I think we do business directly with United Features. I'm not sure about that. Anyway, United Features held the contracts, and still do.

Q. United Features Syndicate held the contracts with other newspapers?

A. Yes. There was no contract, it is just you print the jobs, there is no contract that I know of.

Q. Is United Features Syndicate affiliated with NEA?

A. It is affiliated with the Scripps Howard organization.

Q. And the United Press Association in New York—

2190 A. Yes.

Q. Does Greater Buffalo have the contract with them?

A. We haven't a contract with United Features, as I remember. We merely get an order to print this each week and we do.

Q. Would it be a fair summary to say that what was contemplated by paragraph three is that the newspapers that NEA then had contracts with to sell the printed supplements were to be printed by Greater Buffalo Press and also the other Scripps Howard newspapers that are named in paragraph three were also to be printed by Greater Buffalo Press?

Mr. STEVENS: I object, the contract speaks for itself.

The COURT: Overruled.

By Mr. BERNSTEIN:

Q. Is that a fair summary of your understanding of it?

A. As a subcontractor. They held the contracts and sublet them to us to print.

Q. You did not deal with the particular newspapers involved for whom you printed the supplements?

A. Well, I don't think so. So many of them aren't there any more; the Columbus Citizen isn't there, the Indianapolis Times isn't there.

Q. I invite your attention to paragraph five on page four, we referred to that earlier, and that is where provision is made for the printing to be done either at the Buffalo plant or the Dunkirk plant or the Lufkin plant or the Sylacauga plant. What discussion had you had with Mr. Herman about that?

A. Well, I think we all understood if it could be printed to advantage in Lufkin or Sylacauga, when and if they were ready, we would print them there.

Q. Do you recall how long before you entered into this contract you had discussed printing NEA's business at Sylacauga and Lufkin with anybody on behalf of NEA?

A. Prior to this contract?

Q. That is correct.

A. Sure, they came down and wanted to know would we print these things, we gave them the prices, they made up the contract on that basis.

Q. I am talking about when you had conversations with NEA about Sylacauga and Lufkin?

A. When we talked to Mr. Walker and the people from NEA about printing the comics we likely talked about printing them—giving them the opportunity to print in Sylacauga, giving them the opportunity to print in Lufkin.

Q. Now, inviting your attention to page five, paragraph six (a) and (b), you undertake to pay to Buffalo Color Press six and one-quarter cents multiplied by the number of

pages in the supplement for each thousand copies of any standard page supplement, and then paragraph (b) three and one-quarter cents for tabloid page size. How is that handled mechanically? How do you make those payments?

A. How do we make them?

Q. Yes.

A. We send them a bill for them, they pay the invoice.

Q. Buffalo Color Press was liquidated, do you receive the invoice from NEA?

A. I think so, I am quite sure. I am not too familiar with that.

Q. You are not familiar with the mechanics?

A. No.

Q. Paragraph seven refers to newsprint. Who supplies the—what is the arrangement with respect to newsprint?

A. We supply the newsprint.

Q. When you say that you supply the newsprint, does that mean that you purchase newsprint and then charge
2193 NEA for the printed supplement which includes the newsprint, the ink, the labor, all these other factors in it?

A. Yes, that is all part of the price, if it is mentioned.

Q. So that is it fair to say, is it accurate to say that you sell NEA, the printed supplement, the only part that you don't supply is the features, that has to be gotten from the newspapers or the syndicate?

A. We don't supply the features.

Q. Everything else is supplied?

A. We don't supply the salesmanship, if that is an element in the matter, it is their business, we are subcontractors for them.

Q. Well, the article or the physical thing you create is the printed supplement, the comics?

A. Right.

Q. In order to have that printed supplement you have to have raw material, you have to have newsprint, you supply that?

A. Yes.

Q. You have to put labor on it, you supply that—

A. Yes.

Q. —and ink, and you have to get it to NEA's customers is that correct?

A. Yes.

Q. You do that, you take care of that?

2194 A. No, we don't supply the transportation.

Q. You arrange for the transportation?

A. Yes.

Q. And then you invoice NEA for the finished product, is that correct?

A. That is correct.

Q. And is it a fact that if NEA wants to quote a price to a newspaper that has been printing its own, that it is obligated to confer with Greater Buffalo Press before it quotes a price to that newspaper—

A. No.

Q. —in order to ascertain some element of the price, because of local conditions, transportation, makeready, or some other—

A. No. Wait—

Q. My question is this; does each newspaper have some feature that is really unique, insofar as printing that particular newspaper, either transportation or make-ready, or the arrangement of the comics, or some other thing, so that even though NEA has a contract with you which lists in general terms what the rate will be per thousand and it provides for an increase and decrease, nonetheless, as a customary practice, has to confer with somebody from Greater Buffalo Press as to what the 2195 charge will be for that particular newspaper?

A. No.

Q. Why is that?

A. Because they have a contract. They are familiar enough to know the terms of the contract, pay so much a thousand, any other elements that are involved in there, make-ready items, that is spelled out. They are familiar enough to make up their own price.

Q. And is that true insofar as transportation is concerned?

A. Yes.

Q. Transportation rates, everything else?

A. These are available to everybody.

Q. And do you, on occasion, use private truckers that don't have published rates?

A. Yes, I think so.

Q. On occasions have syndicates asked you particular prices for particular newspapers because of that feature, the transportation feature?

A. That could be or they can go to the trucker themselves and ask it. They are familiar with the truckers.

Q. Did you regard Buffalo Color Press as a captive plant of NEA?

The COURT: Captive?

Mr. BERNSTEIN: That is correct.

Mr. RAICHLE: I don't know what it means.

2196

By Mr. BERNSTEIN:

Q. Did you regard International a captive plant of King?

A. What do you mean?

Q. I thought you testified to that in answer to Mr. Raichle's questions on direct, did you?

A. I don't recall that he asked questions like that. What do you mean by it?

Q. Well, you regarded International as printing entirely for King, isn't that correct?

A. Yes.

Q. Did you regard Buffalo Color Press as printing entirely for the Scripps Howard-NEA group?

A. They didn't print entirely for Scripps Howard and NEA group. They printed for some individual people like the Chicago Daily News, printed their comics. They did that independent of NEA.

Q. Did you regard them as color printing competitors with respect to those accounts?

A. Well, a competitor in the sense they were not very strong competitors, they were in business, we were in business and—

Q. To that extent, you were in the same business?

A. We were in the same business.

Q. Did you regard NEA as a competitor in the sale of features?

2197 Mr. STEVENS: Objection.

Mr. BERNSTEIN: Excuse me, strike the question.

By Mr. BERNSTEIN:

Q. Did you regard NEA as a competitor for the sale of color comic supplements, printed supplements?

A. Yes.

Mr. BERNSTEIN: Please mark for identification document number 124, a letter dated August 25, 1955, from Mr. Koessler to Mr. Nicht?

(Thereupon letter referred to was marked Plaintiff's Exhibit P-98 for identification.)

By Mr. BERNSTEIN:

Q. I show you Plaintiff's Exhibit P-25 in evidence, P-26

in evidence, and P-98 marked for identification, and I invite your attention to P-25 in evidence, a letter to you from Mr. Nicht, dated August 17, 1955, and in the first four paragraphs he talks about some negotiations and contracts, and then he says, "Now we understand that Fargo, North Dakota, Forum has given NEA cancellation notice and the contract will expire in about a year's time. I believe you print a ten-page standard size section for them." Were you printing a ten-page standard size section for NEA for Fargo, North Dakota Forum?

A. I guess so.

Q. Mr. Nicht says to you: "Situations such as this brings up again the matter of what to do about NEA. I think you and I are beginning to see eye to eye in this respect, but NEA is competition, and bad competition because they will use anyone in the furtherance of their own interest. Consequently, I hope we can strike upon some plan which would make it possible for you to retain what NEA printing you have, but eliminate NEA in the process." Then he says: "Take Fargo, for instance. Why shouldn't we make them a proposition based on your printing?" P-26, you write to Mr. Nicht, and I notice that isn't your signature, it is your name on the bottom, is that signed for you?

A. Wait until I read the rest of this.

Q. Look at August 22, 1955, P-26, a letter from you to Mr. Nicht. In the first paragraph you say: "Dear Frank: I told you on the phone of my conversation with Herb Walker and I think he is convinced that he is getting nowhere with his present operation. I gather he is having trouble at St. Louis too, St. Louis realizing that there is no percentage in printing at the prices they are now charging NEA." St. Louis you are referring to world Color?

A. Exactly.

Q. In the next paragraph you say: "I think something will come of this in the next few weeks and abeyance—" I assume that is a typographical error, you mean annoyance?

A. I think you are probably right.

Mr. RAICHLE: What was your answer?

The WITNESS: I think you are right, I think it was meant to be annoyance.

By Mr. BERNSTEIN:

Q. "—from that source will be removed." Now, is the August 22nd letter a response to Mr. Nicht's August 17th letter?

A. I couldn't say. I don't think so.

Q. Do you recall your conversation with Mr. Nicht concerning NEA competition?

A. Yes. He wanted to put NEA out of business.

Q. And did you discuss that at all—strike it out. Look at P-98, your letter to Mr. Nicht, dated August 25th, and you say: "Dear Frank: It appears to me that the best way of handling the NEA problem is to let NEA hold what they have with an opportunity to get a decent price for it and thus realize some income. From the conversation of last week I think this can be worked out." What conversation were you talking about?

A. Probably one of the ones where he wanted to put NEA out of business.

Q. You say, "I think this can be worked out."?

A. I told him I didn't think they should try to put them out of business. Do you want me to tell you some more about that?

Q. Okay. Tell me about the first paragraph, "To let NEA hold what they have with an opportunity to get a decent price for it and thus realize some income."?

A. Nicht told me—there is some memorandum on record here—

Q. Excuse me, we would like to have your present recollection of your conversations with Mr. Nicht concerning NEA?

A. That is what I am giving you.

Q. Right.

A. Nicht told me that there was in the wind a merger coming up between United Press and International News Service.

United Press was the news service that belonged to 2201 Scripps Howard. International News Service was a news service that belonged to the Hearst organization. He said if the merger came about that it was likely that United Press would wind up on top and the Hearst organization would be at the bottom. He said he didn't want to see that happen to King features and the best way for him to forestall that would be to run—to weaken NEA to the point where if the merger came about King Features would be the top dog in the merger.

Q. Did he ask you to do anything about that, to help him?

A. Yes, it says so here, not to print for NEA, not to do anything; to try to help him put NEA out of business. That is all through these letters. You are familiar with them, Mr. Bernstein.

Q. At the same time did you have any conversations with—
strike it out. Am I correct that in response to Mr. Raichle's
questions on direct examination you said that Mr. Walker had
been complaining about King in certain ways, about business,
am I correct in that?

A. Yes, Nicht was knocking their brains out, I think was one
of his expressions.

Q. Knocking their brains out in what way?

A. Taking business away from him, supplanting them
2202 in the features printing field, doing everything possible
to hurt NEA, weaken them, force them into a merger
that he contemplated.

Q. At that time you were in discussions for the printing of
NEA and after the Buffalo Color Press Plant?

A. Discussions with whom?

Q. NEA, concerning doing the printing for NEA?

A. We were printing for NEA, had been for years.

Q. Were you also in discussion with them about buying Buf-
falo Color?

A. We were thinking about it, we talked socially with Leon
Herman about it.

Q. At that time did Mr. Anderson or Mr. Walker, or anyone
else on behalf of NEA, ask you to talk to Nicht about it?

A. Yes.

Q. What was that?

A. Well, the last thing Nicht did was—not the last thing—
I mean he used to send out bulletins to his sales staff, and the
bulletins carried the title "Oust NEA."

Q. Did you see those?

A. Yes.

Q. How did you see them?

A. Because they were in the papers that we got from
2203 King Features after your grand jury investigation.

Q. At the time of your conversations with NEA you
didn't know about those?

A. I have seen them since.

Q. Go ahead.

A. He was hurting NEA. He was hurting them through the
combination—through the process of selling the features and
the printing together.

Q. What did—who on behalf of NEA asked you to do
something?

A. I think it was Walker.

Q. What did he ask you to do?

A. Well, we talked about it and I told him I don't think that is fair, and as I understood it—at least I was somewhat familiar about a law suit that went on in town here that involved the Shea Theaters—I didn't get any legal counsel on this, it was something that I remembered, that the Shea Theaters in Buffalo were partially owned by moving picture producers. I think Shea's Theaters were owned partly by Paramount, partly by Loew's or Metro Goldwyn Mayer, I don't know which, and the Shea Theaters got the good pictures. I know something about that because I was a press agent for one of the theaters that got the lousy ones. A holler went up from the other motion picture producers that Shea's generally
2204 around the country—that shouldn't be permitted, that a producer of the moving pictures shouldn't own the public outlets and shows, you couldn't combine the two together, that was an unfair practice, and I think they were sustained in court by it. I thought this arrangement that King was working added up to the same thing. I told Walker so. I said, "You ought to go to Nicht and tell him about it."

Q. Did you talk to Nicht about it?

A. No, I didn't, I told Walker that I would introduce him to Nicht, they could talk about it.

Q. Do you recall having any conversations yourself with Mr. Nicht, before you introduced Mr. Walker to him, concerning NEA's conversations or complaints?

A. That I don't recall, why Walker wanted to see him. He wanted to see him, I may have told him why I thought he wanted to see him, I don't remember, I don't recall.

Q. As you testified yesterday, you did introduce Mr. Walker to Mr. Nicht at Mr. Walker's suite in the Beverly Hotel in New York?

A. Correct.

Q. Do you recall—think back—how that came about, how did you find yourself at the Beverly Hotel in Mr. Walker's
2205 suite? Did you—

A. I was not at the Beverly. I called Nicht from Buffalo or somewhere and asked him to—if he would meet Walker at a certain time and certain place. I think that is the way it was arranged.

Q. Your best recollection is you told—

A. Mr. Walker told me where he was going to be, could he make an engagement with Nicht to see him at that place.

Q. To the best of your recollection, you did not indicate the subject or anything else?

A. No.

Q. And what did you believe they were going there to discuss?

A. I thought they were—Walker was—I thought Walker was going to discuss the beefs he had about King tying up the features and the printing and hurting him.

Q. Taking business away from him?

A. Taking business away from him, yes.

Q. Now, I show you your letter to Mr. Nicht, P-40, dated January 26, 1956, and you say to Mr. Nicht: "Dear Frank: I don't think we can reasonably deny NEA the privilege of doing business with their blood relatives." In the last paragraph of that letter you say: "It can be worked out, however, under the idea on which we are cooperating, namely, each of us to hold what we have and to share with King any new business which is obtainable." Would you please read that letter to yourself?

A. Yes. I have read it.

Q. And to what did you refer in the first paragraph when you said, "I don't think we can reasonably deny NEA the privilege of doing business with their blood relatives"?

A. The Memphis Commercial Appeal was owned by the Scripps Howard organization. If anybody was going to get their printing, NEA was going to get it or have some say as to who got it. King wouldn't even recognize the family relation, he wanted to have it.

Q. He told you that?

A. Yes.

Q. What did he expect you to do?

A. He expected if I got it to pay him a commission, which we didn't.

Q. What did he expect you to do about him denying NEA the privilege of doing business with them?

A. Certainly we were not going to deny them the privilege of doing business.

Q. You did not intend to compete for that business?

2207 A. NEA couldn't compete, they didn't have the facilities to compete.

Q. You say NEA?

A. NEA, yes.

Q. Couldn't compete for the commercial appeal?

A. No.

Q. Why not?

A. Because they didn't have a press that could print ten pages. This was a ten-page job.

Q. January 26, 1956?

A. That is right.

Q. Then they were having the printing done at Buffalo Color Press at Wilkes-Barre?

A. No.

Mr. RAICHLE: You are getting tired.

By Mr. BERNSTEIN:

Q. January 26, 1956, NEA was having The Greater Buffalo Press, your company—

A. Yes.

Q. Do the printing for it?

A. Yes.

Q. Your company was equipped to print the Memphis Commercial Appeal?

A. That is right.

2208 Q. NEA could then compete for the Memphis Commercial Appeal and have the printing done at your company plant?

A. They could have done it in one—

Mr. STEVENS: Objection. You don't mean compete with the Memphis Commercial Appeal.

By Mr. BERNSTEIN:

Q. I will withdraw the question and say, NEA could compete with King to get the Memphis Commercial Appeal's business and have it printed at your company's plants?

A. They did compete with King through us.

Q. What do you mean through you?

A. They could have done it one of two ways; got the business themselves and subcontracted it to us, or they could have said to us, "You get the business, you pay us a commission," which we do.

Q. You were telling Mr. Nicht in the first paragraph of this letter that as for you, Mr. Koessler, was concerned, it didn't make sense that you would go down to seek the business of the Memphis Commercial Appeal as the Greater Buffalo Press, Inc., since it was NEA's account and NEA's business?

A. I didn't say that. I said to Nicht, "You are a little off your rocker if you think you can get that job." That is what I said to him.

Q. That is right. You intended either the contract would be with the Greater Buffalo Press, Inc., and you would give NEA commission——

A. We hoped so.

Q. Or the contract would be with NEA?

A. Yes.

Q. And you would do the printing?

A. Exactly. That is what we were hoping. I said, "If however, we get in the picture as printers——"

You say: "If however, we get in the picture as printers we will see that King is cut in for something as much as we can squeeze out of it."?

A. That is what you always had to tell Nicht, he would never take no.

Q. Then you gave him an alternative, "The alternative would be for NEA to take the job to St. Louis——" —World Color—— "——which is too close for comfort."

A. I didn't give him an alternative, I said that was what the alternative would be. We couldn't try to dispose of NEA in this picture, NEA was sales agent, if anybody was going to get the job it was NEA.

Q. You were saying to King, "Wise up, get smart, accept this commission if we get in there, you are not going to be able to get the business"?

2210 A. Exactly, except we didn't pay the commission.

Q. Did you get the business?

A. Yes.

Q. You led him to believe in this letter that if you got into the picture you would see he is cut in?

A. Oh, led him to believe—you always had to tell him maybe.

Q. You didn't mean it at the time?

A. No.

Q. Then——

A. Any more than he meant he was going to get us the Hearst business.

Q. Is this correct, Mr. Koessler, from 1955 to 1958, going through all the discussions and negotiations in that contract you talked to the lawyers about and the lawyers said it wasn't

right, all this time you didn't believe him and he didn't believe you?

A. Exactly.

Q. Now, the last paragraph——

A. As a matter of fact, I don't think Mr. Nicht believed anybody.

Q. How about you?

A. He didn't believe me for sure.

Q. How about you?

A. Did I believe him? No.

2211 Q. You did believe other people?

A. Certain people.

Q. You believed Mr. Anderson?

A. Mr. Anderson——

Mr. RAICHLE: I think this is carrying it a little too far, who believed who.

The COURT: It doesn't mean anything to me.

Mr. BERNSTEIN: Mr. Anderson of NEA, Earl Anderson of NEA. I will withdraw the question.

The COURT: Well, you can consider that. We will start either with that question or another in the morning at ten o'clock.

I have other things, I don't want to crowd you again, I would like to start earlier but I can't control some of the exparte stuff that rolls in in the morning. I am advised that the Koessler family has a party of importance to them, some type of an anniversary.

The WITNESS: Tomorrow.

The COURT: Yes. You can count on that. If you can get out at four-thirty——

The WITNESS: Fine.

2212 The COURT: Four-thirty we will quit for your purposes. I will see you at ten o'clock in the morning.

(Thereupon the court was in recess at 4:30 p.m.)

* * * * *

(Proceedings resumed, pursuant to recess, commencing at 10:00 a.m.)

JOHN WALTER KOESSLER, having been previously duly sworn, resumed and testified further as follows:

Mr. BERNSTEIN: Initially, if the Court please, I would like to offer in evidence a few documents that were discussed yesterday and were either offered and not marked in evidence or were not offered in evidence. The first is a document numbered 97,

dated June 19, 1957, which the defendant Greater Buffalo requested be offered in evidence along with other documents they asked the plaintiff to offer in evidence.

The COURT: Those you wish to have, those are further letters?

Mr. RAICHLE: In connections with his negotiations.

The COURT: Received.

(Thereupon plaintiff's exhibit P-97, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: The next is P-72, that was the signed agreement between Greater Buffalo Press and King Features, and I believe it was received in evidence yesterday but it wasn't marked. In any event, I offer it in evidence now.

The COURT: All right, received.

(Thereupon plaintiff's exhibit P-72, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: The next document is P-92 for identification, that is a letter from Mr. Koessler to Mr. Houston Harte of the Harte-Hanks Newspapers, dated June 17, 1954, about which Mr. Koessler testified yesterday.

The COURT: I am assuming there is no objection, received.

(Thereupon plaintiff's exhibit P-92, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: The next is P-95 for identification, a letter dated August 27, 1954, from Mr. Koessler to Mr. Nicht, about which Mr. Koessler testified yesterday.

(Thereupon plaintiff's exhibit P-95, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: P-96 for identification is a memorandum from Mr. Hammond of the Buffalo Color Press, dated October 7, 1958, with reference to the Buffalo News, about which Mr. Koessler testified yesterday.

(Thereupon plaintiff's exhibit P-96, previously marked for identification, was received and marked in evidence.)

2216 Mr. BERNSTEIN: P-98 for identification is a letter dated August 25, 1955, from Mr. Koessler to Mr. Nicht, about which Mr. Koessler testified yesterday.

(Thereupon plaintiff's exhibit P-98, previously marked for identification, was received and marked in evidence.)

CROSS-EXAMINATION

By Mr. BERNSTEIN Continued:

Q. Now, Mr. Koessler, inviting your attention to that portion of your testimony in answer to Mr. Raichle's questions the day before yesterday, concerning the growth of Greater Buffalo Press from a small operation in a private house to the operation that it is today, and just to make the record clear, can you give us some general idea of the dollar volume of the printing of color comic supplement news printing that Greater Buffal Press, Inc. is doing, plant by plant?

A. Altogether I would say about eighteen million dollars.

Q. When you say "altogether", do you include Wilkes-Barre?

A. I don't think so.

Q. Do you include Lufkin?

A. Yes.

2217 Q. Do you include Sylacauga?

A. Yes.

Q. And do you have a general idea of the printing done at Wilkes-Barre?

A. Yes.

Q. Color comic supplement volume, what is that, please?

A. I don't know, you better ask Joe Gorman about that.

Q. Do you have a general idea of the net, the combined net worth of Greater Buffalo Press, International, the Lufkin plant and Sylacauga plant?

A. We have it on the books, but I could find out.

Q. I know that. I mean just to make this picture——

A. I don't know what it stands at, at the present time.

Q. I wanted to get some idea for discussion purposes. This initial investment that you had, what was it, a thousand dollars in 1926, and that investment is now worth approximately how much? Give us a figure, we won't hold you to it. Approximately how much?

A. I couldn't say.

Mr. RAICHLE: You mean per book?

The WITNESS: I couldn't tell you.

Mr. RAICHLE: We will furnish it to you.

Mr. BERNSTEIN: Fine.

The COURT: Do you have a big item of good will in
2218 there?

The WITNESS: None. The net worth is merely the investment minus the write-off.

The COURT: You will supply them with a balance sheet?

Mr. RAICHLE: Sure.

By Mr. BERNSTEIN:

Q. And I take it as your business started in approximately—
what year?

A. 1926.

Q. 1926, and it continually grew up through—I want to limit our discussion now to the period from 1926 through the purchase of International in 1955—your business continually grew during that period from 1926 to 1955, is that correct?

A. Yes, sir.

Q. And at that time the equipment that you had on hand increased, isn't that correct, the printing equipment?

A. Yes.

Q. Now, where did you get the equipment that you increased?

A. Well, when we—in some cases when we would take over the printing of a newspaper we would buy its color comic equipment. We did that in the case of Cleveland, we did that in the case of Detroit, we did that in the case of New Orleans.
2219 We bought other equipment on the market and rebuilt it.

Q. Did you buy any equipment from Hearst Newspapers?

A. In what year?

Q. Any time during the period from '26 to '55?

A. No.

Q. Didn't buy any?

A. No.

Q. Did you buy any equipment from any newspapers that you did not do the printing for the color comic supplements?

A. Yes, we bought some equipment from the Philadelphia Enquirer.

Q. Who did their color comic supplement printing after you bought the equipment?

A. They continued to do it themselves. They did it in the roto process, other than our process.

Q. And as your business was growing from 1926 to 1955, were you printing any King Features, not for King, not for

Hearst, but for the newspapers for whom you were printing, did they have King Features in them being printed?

A. Some of the feature material printing we did had King Feature material, yes.

Q. Did you have other features beside King's?

A. Yes.

2220 Q. Which did you have the most of?

A. I don't know. That would be hard to say, every newspaper is different.

Q. Those that you were printing, you were printing the larger runs, newspapers with the larger runs?

A. Yes.

Q. A very substantial number of King Features in those newspapers?

A. Some newspapers there wasn't any because King limited itself to selling one newspaper in an area. Detroit, for instance, Hearst had a paper in Detroit, and in the Detroit newspapers there wasn't any King material, none whatever.

Q. What material was in that newspaper?

A. They had Chicago Tribune, they had NEA, they had United Features, they had McNaught, all the syndicates exclusive of King.

Q. What papers were you printing for that had King Features?

A. In Detroit?

Q. No.

A. Any number of papers.

Q. A large number?

A. We printed three hundred and some, and I am sure that a large number had King Features material in them.

2221 Q. And how much of a shakedown were you paying for those features?

A. We weren't paying any. I'll explain why.

Q. Please do.

A. Well, in the case of a newspaper printing its own comics, it already had contracted with King for the features and they knew the price of the features, King knew they had the features, so the newspapers didn't have to pay them any more, they were printing their own comics, paying for their own features. They had the printing and features separated. So when we took over only the printing, we didn't have to be involved in the features.

Q. You were not concerned during that period of time that by taking business away from King, King would increase the price on some feature other than the comic features?

A. Were we concerned about it?

Q. Yes.

A. I don't think at that time. This goes back in the early thirties and forties. I don't think the subject came up.

Q. You were——

A. I don't know whether they did any work on these newspapers or not, but I don't know about it.

2222 Q. As far as you were concerned, your business was not being hindered by any shakedown by King during that period of time?

A. It was hindered by King's ability to tie up the features and the printing so that we couldn't get the jobs.

Q. I am talking about those papers that you were printing and had King Features in them, it wasn't hindered as to those?

A. No, but that was limited to quite a few cities. I mean, Boston, we print the Boston Globe, there is a Hearst newspaper in Boston, so no paper in Boston we printed had King Feature material at the time. You can go down the line.

Q. During that period of time, in your early growth from the thirties through the—let's take the ten-year period from the thirties to the forties—during that period of time you were growing, were you not, increasing your volume of business?

A. Yes.

Q. And during that period of time was King an active competitor of yours in the sale of comic supplements?

A. Yes.

Q. Were you taking business away from King?

A. Yes, to the extent we could.

2223 Q. To the extent you could. You were growing and being successful?

A. Yes, but most of our success, most of our growth, was on newspapers that printed their own comics.

Q. And they didn't need King Features?

A. A large number of them didn't have King Features material in them.

Q. Some of them did.

A. Some of them had some.

Q. You had no difficulty continuing to get King Features as to those newspapers?

A. We didn't get them, the newspapers had them. All we did——

Q. You didn't experience any difficulties in getting that newspaper's business for the King Features?

A. King in many cases didn't know we had the job. I mean, these people wouldn't do business with King for the reason they didn't have any King material, they couldn't get any of it, there was a Hearst newspaper in the city in which they operated. So——

Q. Which one of the papers that formerly did its own printing, that you then did the printing for, during the period from 1926 to 1940, had King Features, comic features.

A. Oh, seven of them. The Syracuse Herald was one 2224 of them.

Q. Was that a big run?

A. Fairly big, a couple hundred thousand.

Q. You had the paper—or put it this way; Greater Buffalo was able to continue printing supplements with King Features in them for that Syracuse paper?

A. Yes, but Mr. Nicht suggested a shakedown on that one, too.

Q. When was that?

A. In 1954.

Q. I am limiting the period to 1940, I am going in that early period of 1940. I want to take this step by step. Now, during that period in 1940 did you do any printing for and Hearst newspapers of comic supplements?

A. Hearst newspapers?

Q. Yes.

A. No.

Q. Did you do——

A. Newspapers owned by the Hearst organization?

Q. Yes.

A. No.

Q. Did you do any printing for King of color comic supplements?

A. In the forties, no.

Q. Take the period from 1940 to 1950, did you do any 2225 printing for Hearst newspapers during that period of time or King Features, either one?

A. I don't think so.

Q. Then, in your best recollection, when did it start that you began doing printing for King Features?

A. It started in 1954.

Q. With what papers?

A. With Youngstown, Toledo and Erie.

Q. Those were the first papers you started to print for?

A. Yes. King Features gave us the order on that.

Q. Had you been doing any business with Mr. Nicht prior to that time?

A. No.

Q. How did you start doing business with Mr. Nicht?

A. Well, he wanted to cause some trouble with his printer, Gorman, I guess. He wanted to get us to compete with—he wanted to get lower prices and go back to Gorman and break down his prices.

Q. He wanted you to compete with International?

A. No, he wanted us to give him prices so he could go back to Gorman and get lower prices from Gorman.

Q. Did he tell you that?

A. No. I don't know whether he did or not. I know what the purpose was.

Q. And did you give him prices?

2226 A. Yes, we did give him prices. Many times he asked for prices.

Q. Did you give him prices in order that he could go back to Gorman and get a lower price?

A. We gave him our own price.

Q. To get the business or to get him to get a lower price from Gorman?

A. We gave him prices, if he would accept them we would do his business.

Q. You wanted to lead him on to get his business?

A. No, he asked for prices, we gave them to him.

Q. You were serious about getting his business?

A. Yes. If he would accept the price, we would do his business.

Q. You believed at that time that he was seriously looking to give some business to you?

A. No, not until he gave it to us.

Q. But you did not completely think it was so unrealistic that you would not get it?

A. What did I think? I don't know.

Q. I am trying to find out—

A. When I gave him the prices was I assured he was going to give us the business? No.

Q. I know that. You did not give them the prices to mislead or fool him or put him on or lead him on, you gave him
 2227 the prices as any normal businessman would do, looking to get as much business as you can, with a serious effort to get the business, is that correct?

A. That is right.

Q. And did you know at that time whether or not Mr. Nicht was also seeking to put printing business at Eastern Color?

A. I have heard he was, yes.

Q. At the same time?

A. I think so.

Q. Did you regard yourself as a competitor for that printing business with Eastern Color?

A. I think so.

Q. You did not regard yourself as a competitor with International for that printing business?

A. No, because International didn't have any printing business to hand out, it was business that belonged to King. Only King could give it to us. It had to be King's decision.

Q. And only a syndicate could give its printing business to Eastern, except for newspapers?

A. What do you mean?

Q. King could give its business to Eastern?

A. If he wanted to.

2228 Q. You felt you were in competition with Eastern for King's business, did you?

A. No. What do you mean?

Q. Well, let's see if we can understand the situation. I understood you to testify that in 1954 Mr. Nicht discussed with you printing three runs, is that correct?

A. Right.

Q. Did he discuss printing more than that or just the three?

A. I think only—he may have, he was always talking about a lot of things.

Q. Was he also talking about all the Hearst business then?

A. Yes.

Q. Did he come in, and was this conversation at the start—

A. Well, this is how many years ago?

Q. 1954.

A. Yes. You expect me to remember what he said when he walked in the door?

Q. No, but I would be greatly appreciative if you would try and think back.

A. He come down for the purpose of getting prices on Toledo, Youngstown and Erie.

2229 Q. I would like you—

A. We talked about that.

Q. I would like you to think back to that occasion, see if you can recall the occasion, see if you can recall whether or not the nature of the discussions, the kind of relations that you had—after all, Mr. Nicht was your principal competitor at that time, was he not?

A. Yes.

Q. So when your principal competitor comes in, it is an unusual situation, isn't it?

A. Not for him, no.

Q. Was it for you?

A. We were trying to get the business.

Q. Right. Now, at that time was Mr. Nicht talking to you about his potential or opportunity of switching his business from International over to Greater Buffalo?

A. He said he could switch some of it, yes.

Q. Was he also talking about switching or getting additional Hearst business and putting it into Greater Buffalo?

A. Whether he talked about it that day, I don't know.

Q. But during that period he did, 1955 and 1954?

A. That was one of the promises he held out, the big
2230 volume of business that we may or may not get.

Q. You gave him prices, serious prices, with the hope—no assurance—with the hope that if you were able to swing it, you would get that business, is that correct?

A. We gave him the prices. If he would accept those prices we would do his printing, yes.

Q. You were serious about it?

A. Certainly we were serious about it.

Q. And when was the first time that Nicht shook you down for commission on this business?

A. I think the first one was the Harte-Hanks papers. There was an apparent attempt on the Syracuse Herald prior to that time.

Q. How about Waterloo, Iowa, was that the first or a later one?

A. That came later. It could have been earlier, I don't know. Waterloo was a matter of features, it wasn't printing price.

Q. The Harte-Hanks, what was that a matter of?

A. That is a group of newspapers down in the southwest.

Q. I know that. What was the discussion about that, the Harte-Hanks?

A. We took the business away from him, the printing business away from him.

2231 Q. This is while you were printing for Nicht some other business, is that correct? You were printing some of these runs for King Features, were you not?

A. Yes.

Q. It was while you were printing these runs for King that you took some other business away from him?

A. Yes.

Q. He came in and discussed your taking that business from him?

A. I don't think he came in—he didn't know we took it away, we didn't tell him. These people wanted—asked us to put a price in on it, and we did, we put our regular price on it, and they decided to give it to us. When Nicht heard about it he took quite a burn.

Q. What did he say?

A. He told me he was going to the Harte-Hanks people, and whatever money he was losing as a consequence of losing the printing business he was going to make up for it on the features, one way or another. He was going to get it from the Harte-Hanks people or from us.

Q. So you agreed to give him a commission not to stir up that trouble?

A. That is right.

2232 The COURT: Mr. Koessler as I understand it by this time you had perfected methods of printing wherein you were making a nice profit and out of that you felt compelled to pay some of this tribute?

The WITNESS: I would like to make it clear that this thing we paid King came out of us not out of the customer.

The COURT: In other words as I understand what you have said in the last few days is that as time went on you have no question that you had perfected methods where you could do it cheaper you were making a nice profit as you were entitled to and out of that you shared if you will with King in order to have these features not withdrawn?

The WITNESS: We were making a sufficient profit to do it. When they took that——

The COURT: You were able to do it?

The WITNESS: Able to do it.

The COURT: You had by that time learned to function so physically that you could afford, if you had to, to give
2233 some up?

The WITNESS: If we had to.

The COURT: One thing I am sure I have heard in this lawsuit; we talk about taking printing from Nicht and King; how did they accomplish the printing for a newspaper? They didn't have machinery of their own, a plant of their own?

The WITNESS: International Color Printing Company.

The COURT: All of it was done there?

The WITNESS: Yes, sir.

The COURT: No matter where it was in the country?

The WITNESS: Some of it was done—they had a printer, the Fort Worth Star-Telegram in Texas.

The COURT: When we are talking about Nicht doing the printing, selling the features; basically, we are talking about the production of Wilkes-Barre?

The WITNESS: Right.

2234 The COURT: All right.

By Mr. BERNSTEIN:

Q. And so we have this situation in 1954 when Nicht turned over to you the printing of the Toledo, the Erie and what other newspaper?

A. Youngstown.

Q. The Youngstown newspaper. And then you paid Nicht for the—then Nicht discussed with you on or about the same time the Binghamton and Utica situation, is that correct?

A. No, this was long before. He never discussed the Utica and Binghamton with me.

Q. He did not?

A. No, except that telephone message you got there.

Q. Aside from that he did not talk to you about it?

A. No.

Q. But on those three telephone conversations he did?

A. There was one telephone conversation you got the notes on there——

Q. Right.

A. —where he took——

Q. Wasn't that on or about the same time as the Toledo Erie—

A. It was later.

2235 Q. Now, Mr. Koessler—

The COURT: I wonder if I could interrupt again. I take it, Mr. Koessler, that let us say somewhere in the forties, by reason of your perfecting methods, as you have generally described, you felt you were doing better work than International Color at Wilkes-Barre was doing?

The WITNESS: And at lower cost.

The COURT: I go back some years when I used to look at the comics more than I do now, and there used to be a lot of overprinting and stuff, you would have a character in a comic strip and he would be half pink and half green, and so forth; is that what you are talking about, better work?

The WITNESS: Yes.

The COURT: I don't see that any more.

The WITNESS: That is the improvement or part of the improvement, yes.

The COURT: And was it your improvement?

The WITNESS: Yes.

The COURT: I was trying to get a little background, 2236 trying to get a view of what you had to sell by way of methods and costs that this International didn't.

The WITNESS: They did later, too.

The COURT: You see, in this lawsuit, simply put, there could be two explanations. One, I have used the expression you had, by effort, made a better mousetrap, you could turn out a good product at a cheaper cost. The other side of the lawsuit is the one that the Government is contending, that this was all gimmicks. I am equally interested in their side, and I am also interested in hearing, equally, some other explanation, which of course you have been giving. But somewhere in the past of the lawsuit and since you testified, I have another image made by you that indeed you were doing a better job, cheaper. I mean a substantially better job.

The WITNESS: Yes, sir.

2237 The COURT: All right.

By Mr. BERNSTEIN:

Q. You made the operation of International much better after you acquired it, did you not?

A. We think we did.

Q. You put in pre-registry that made it a lot more efficient?

A. Yes.

Q. And you showed them how to improve their machines and their maintaining and repairing their machines, did you not?

A. Yes, sir.

Q. You put in art work for their commercial department?

A. Yes.

The COURT: I want to ask you, Mr. Bernstein, something. I am not inviting an argument and I know you all have one, but what is wrong with that?

Mr. BERNSTEIN: Nothing, your Honor.

The COURT: All right.

Mr. BERNSTEIN: I would like to reserve a more complete answer to the Court on the legal effect of the evidence when
2238 it is all over, if the Court please. I would like to develop——

The COURT: I wanted to know if there was any criticism of a man——

Mr. BERNSTEIN: None whatsoever.

The COURT: ——buying what appears to be a tired plant with tired management, family management, and putting it in first class shape, I want to know your views.

Mr. BERNSTEIN: The Government——

The COURT: You are going to enlarge later, but there is nothing criminal in making an improvement?

Mr. BERNSTEIN: There is nothing criminal in making an improvement, it is highly commendable, it should be encouraged, the Government should encourage it. The Government wants to stop the elimination of a competitor and wants the competitor to make improvements, we want competition so that Mr. Koessler will improve his Greater Buffalo plant in competition with the International plant when Hearst gets
2239 additional business, and in that competition there will be improvements.

The COURT: Are you going to show that the so-called competition could meet the standards that he described that he met?

Mr. BERNSTEIN: The Government contends——

The COURT: I used the rather wornout expression, "mouse-trap", but if somebody else catches the mice I can't expect much, can I?

Mr. BERNSTEIN: No, sir, the Government contends had there not been collusion between Mr. Nicht and Mr. Koessler, Mr. Nicht would never have permitted Mr. Koessler to take his business away from him, and if Mr. Nicht had to do it by improving the International plant, he would have done it, he would have gotten the talent, bought the talent, hired the talent, put in the money in the International plant to do it.

He could have done it just as well as Mr. Koessler did
2240 in competition with Mr. Koessler. That is the Government's position.

The COURT: That is your theory?

Mr. BERNSTEIN: That is our theory, your Honor.

The COURT: All right.

Mr. BERNSTEIN: And that theory I would like to reserve the right to develop after the evidence.

The COURT: All right. I can't help but being struck by one thing, Mr. Koessler is a printer, Nicht was not a printer.

Mr. BERNSTEIN: That is right.

The COURT: Throughout this lawsuit I have been at least in some way made aware that indeed Mr. Koessler is a printer, a first rate one, who is a little like some people I know down in the country named Wilson, who were with Ford years ago. They were journeymen mechanics. You could get all the M.I.T. men in the world at General Motors, and those fellows could look at something and say that needs a round knob down here and put it to work, and it
2241 would work. Now, I got the image of Mr. Koessler and those who surround him, that they can take an old piece of a printing machine and by the grace of God and native ability make it work, make it work faster and better. You were talking about mats the other day, which are terribly expensive and time consuming, all kinds of pieces needed. At one time in the past the evidence was that Mr. Koessler put it together, not having four pieces, or words to that effect—I am not mechanical enough to know what went on. Now, you see, I know your point, there may be some correspondence, and undoubtedly there is, letter writing subject to two meanings. We have had some of Koessler's meanings, which may not be exactly what appears to be the meaning when you first read it, unless you read it all and
2242 get his version of it. But there is, I think, a possible explanation for many of these things, based on the

skill of a producer of a product. I will give you a chance to sum up in writing or orally on the whole thing, of course. But this you must realize, I am looking at this case from this view; of course you are doing the best you can to persuade me the true view is collusion.

Mr. BERNSTEIN: I respect and appreciate your Honor's expression of his tentative thinking as the evidence is going along.

The COURT: Isn't that about it?

Mr. BERNSTEIN: It is helpful to the Government to have—

The COURT: Do you think I should have other views?

Mr. BERNSTEIN: The Government thinks you should have another view, and I would like to develop that later. I would like to say at this time—I think it would be helpful
2243 to the Court and clarify the situation—at the moment

I would like to say just this, that that part of your Honor's remarks which refer to the technical skill and ability of the Koesslers, the Government subscribes to wholeheartedly. It agrees that Mr. Koessler and his company is a very efficient, very effective company, and could be a very, very effective competitor and prior to the purchase of International was an effective competitor against International. I emphasize against International. There is a little bit of legal mumbo-jumbo that International wasn't selling to any newspapers, International was only selling to one customer, King, and King was doing the selling to the newspapers, King was in this anomalous position of being both the potential customer of Greater Buffalo and also being a competitor of

Greater Buffalo. It is the Government's position that
2244 Greater Buffalo was in competition with International to the extent it got business of King's away from International, it was taking competition away from International. If it could do it by a better job, a better price, it was all well and free to do that, except if it did it as part of a collusive deal, "You leave my customers alone and I'll leave yours alone and I'll give you a share of the commission that I earn on any new business that I get", that is not the kind of competition that the antitrust laws permit.

The COURT: Do you know anything about International before Koessler took it over?

Mr. BERNSTEIN: Yes.

The COURT: Do you contend it was turning out as good a product as he was?

Mr. BERNSTEIN: We will develop that through Mr. Gorman when he testifies. He was in charge of the International 2245 operation. We will get the full picture of the International operation and I would prefer——

The COURT: Well, you know we have no jury here. You may wonder about these stops and breaks; but I am interested in learning the whole picture, and I feel that I stop you when I have to and talk to you and to Mr. Raichle when I have to, with the view of finalizing some time what I consider the facts to be.

Mr. BERNSTEIN: I appreciate the opportunity of learning your Honor's tentative thinking on the matter.

By Mr. BERNSTEIN:

Q. Now, Mr. Koessler, let's explore that question as to whether or not Greater Buffalo was in competition with International. International was a printer of color comic supplements?

A. A printer.

Q. A printer of color comic supplements?

A. Yes.

Q. Did it print anything else but color comic supplements 2246 at the time Greater Buffalo acquired the stock of International?

A. Yes, I think they printed comic books and a few things like that.

Q. For anyone other than King?

A. No, I think they printed—I'm not sure—they printed some for King, whether they did for other people, I don't know. I don't think so.

Q. The product that International made was a printed comic, either a supplement or a comic book, is that correct? Wasn't that their product?

A. I think so.

Q. Wasn't that Greater Buffalo's product in part—you had other work—wasn't that your product?

A. Yes.

Q. Wasn't that Eastern Color's product?

A. Yes.

Q. Wasn't that Acme's product?

A. Yes.

Q. Wasn't that later Southern Color's product?

A. Yes.

Q. Didn't you regard yourself as in competition with them for the printing of that product?

A. In competition with who?

Q. Acme?

2247 A. Yes.

Q. Eastern?

A. Yes.

Q. Southern?

A. Yes.

Q. And International for King's business?

A. Wait, International didn't—we were in competition with Acme, Acme sold printing. We were in competition with all these other people, Southern, they sold printing, Eastern, they sold printing, but we were not in competition with International because International didn't sell printing.

Q. All right, let's clarify that. Did Eastern print for any syndicate that had contracts with newspapers?

A. I don't know. It could have.

Q. You don't know?

A. I don't know.

Q. How about Acme, did Acme print for any syndicates that had newspapers as customers?

A. They could. I think Acme printed West Coast material for NEA, possibly for other people.

Q. Now, to that extent was Acme in competition for NEA's business with Greater Buffalo Press?

A. Acme was in competition with Greater Buffalo, yes.

Q. For NEA's printing?

2248 A. For everything.

Q. Including NEA's—

A. Including NEA.

Q. Wait a minute, why was not International in competition with Greater Buffalo for King's business?

A. Because International didn't sell their printing.

Q. They sold it to King?

A. Yes, they didn't sell it to the newspapers.

Q. I understand, I understand. Greater Buffalo sold printing in two ways; it sold it to the syndicates, NEA, didn't it? Didn't it?

A. Sure.

Q. You also sold it to newspapers?

A. Yes.

Q. International only sold it one way; it sold it to the syndicate, King?

A. They were a sub-contractor for King Features syndicate.

Q. I know that is your legal conclusion.

A. It is a fact.

Q. That is your conclusion, Mr. Koessler. I am trying—

Mr. RAICHLÉ: Just a minute, please.

By Mr. BERNSTEIN:

Q. I am trying to ascertain what happened.

Mr. RAICHLÉ: In his understandable zeal, counsel is
2249 arguing with the witness and I object to that. The facts
have been developed for your Honor to reach these conclusions.

The COURT: I understand. Now, Mr. Koessler says they were a sub-contractor, and you have a version of how business was done, that is, that King contracted to have this stuff printed with International.

Mr. BERNSTEIN: That is correct. I am trying to ascertain also as another fact that Mr. Koessler testified in direct examination, in answer to Mr. Raichle's questions, and I recall I objected and the Court overruled the objection; was International a competitor of Greater Buffalo? I am trying to ascertain from this witness not only those simple facts, but whether this witness, himself, regarded International as a competitor. This, of course, is cross-examination, and I am trying to explore
2250 that.

The COURT: You fight with him because he says they were sub-contractors. He already demonstrated to me that while he needs lawyers from time to time he is pretty well up on things, watches things pretty well himself. He talks about the theater fight some years ago, he had that accurately portrayed. I remember that Shea fight. He says they were sub-contractors and I am going to let him say so. If you want to probe that further, go ahead.

By Mr. BERNSTEIN:

Q. I am talking about the time—limiting our discussion now, Mr. Koessler, to the time immediately prior to when Greater Buffalo purchased the stock of International, while you were in the negotiations with Mr. Gorman for the purchase of International, during that period from about January, 1955

through June, 1955. At that time, to your knowledge, King had a contract with International whereby International would print only for King, isn't that correct?

2251 A. Gorman told me they had such a contract with

King, yes. It was a contract that only ran for six months, as I remember it. It had been a ten-year contract, it lapsed and was being continued for another six months.

Q. International had one customer and that was King, is that correct?

A. Yes, as far as I recollect.

Q. What was International selling to King?

A. They were selling printing.

Q. Were they selling the same product that you were selling to King for the Toledo, Erie and Youngstown runs?

A. Yes, they were selling the same product, but let me straighten you out, if I can. General Electric is in the refrigerator business, and Sears, Roebuck is in the refrigerator business, selling them. But Sears doesn't make any refrigerators, and General Electric—or maybe not General Electric but RCA contracts—they are in the refrigerator business, they contract to have the refrigerators made. RCA contracts with somebody in Indiana, Sears, Roebuck contracts with somebody else. I don't know the name of the company that makes them, and neither do you, unless you are smarter than I am. Sears sells that product, it's a Sears, Roebuck refrigerator, and the
2252 person that makes those refrigerators for them isn't competing with the other refrigerator maker down there that makes the refrigerators for RCA.

Q. If the person who made that refrigerator did also sell—if Sears didn't make any sales because General Electric was selling direct, Sears wouldn't remain in business, nor General Electric—if Sears made all the sales, General Electric didn't make them, General Electric wouldn't remain in the refrigerator business, and by the same token, is this correct—withdraw that question.

Mr. RAICHLE: It is a philosophical observation more than a question.

Mr. BERNSTEIN: I will withdraw the question and approach it this way.

By Mr. BERNSTEIN:

Q. When Mr. Nicht discussed with you—

The COURT: Excuse me just a minute. Isn't what you are

saying this; that King had International wrapped up virtually for its complete product except for trifles?

The WITNESS: Exactly.

2253 The COURT: No one had you wrapped up?

The WITNESS: Exactly.

The COURT: You were looking for the whole field?

The WITNESS: Right.

The COURT: Isn't that about what you are trying to say the distinction is? This was basically King's tool, exclusive tool, for production, and it wasn't competing in the field for printing?

The WITNESS: No, they were sub-contractors, like this machine shop that makes the refrigerators for Sears, Roebuck don't make a product they sell on the market of their own.

By Mr. BERNSTEIN:

Q. Nobody had Greater Buffalo wrapped up, as far as printing color comic supplements?

A. No. Nicht tried to do it.

Q. H wanted to wrap you up?

A. He wanted to, we didn't want to get wrapped up.

Q. He talked to you several times about that?

A. Yes.

2254 Mr. RAICHLE: We have been over this so much.

Mr. BERNSTEIN: Just a minute——

The WITNESS: He talked about being exclusive representative for what remained in the business, yes. We didn't agree to do it.

By Mr. BERNSTEIN:

Q. At the time you printed the Toledo, Erie and Youngstown runs for Mr. Nicht, you were seeking from Nicht additional business to be printed at the Greater Buffalo plant rather than at the International plant, isn't that correct?

A. We were looking for business from everybody.

Q. So then my statement is correct?

A. Yes.

Q. And when did Mr. Nicht begin the discussion? Was he also discussing with you that time switching the business over from the International plant to the Greater Buffalo plant, his business, the business that he was giving International, was he talking about switching that to Greater Buffalo Press?

A. In the case of Toledo, Erie and Youngstown, yes.

Q. How about other newspapers?

A. I don't think he talked about any other newspapers
2255 at that time.

Q. When did he first start talking about switching Hearst's business over to Greater Buffalo?

A. I don't think he ever talked to me about that.

Q. Well, that is where I guess there is a misunderstanding. I got the impression yesterday from what you said that Mr. Nicht was always making statements to you about getting you the Hearst business.

A. Generally, yes, but you are talking about specific instances and specific papers and things like this.

Q. Was he talking in that general tone?

A. He was always making it appear that he could be a great factor and help us to a great extent.

Q. By putting printing business in the Greater Buffalo plant with contracts that he would get?

A. That is right.

Q. And was he talking along those lines before Greater Buffalo Press bought the stock of International?

A. Obviously. He talked about Toledo, Erie and Youngstown, we were doing those jobs, and had been doing them for a year.

Q. What I am trying to get clear; on or about the same time, and before Greater Buffalo Press bought International, he was also talking to you about printing Hearst business at the

Greater Buffalo Press plant with contracts that King
2256 would get?

A. Hearst business?

Q. Yes.

A. He talked generally about this big volume that Hearst had which they were doing for themselves, he might be able to swing that.

Q. Right.

A. He didn't say when or where or how, but maybe.

Q. Did you give any thought to the desire to get that business, were you anxious to get that business?

A. We were anxious to get any business.

Q. Just that business?

A. That business, yes.

Q. And was this before you bought International's stock?

A. These conversations go off before that? Yes, I think they did.

Q. Now, did he also at that time talk about being your exclusive, at the same time he was talking about—

A. No. The time he began to talk about exclusive is outlined there.

Q. I want your recollection.

A. That is it.

Q. What is your recollection as to when he began talking about exclusive?

A. Whatever the papers indicate.

2257 Q. You mean the letters you wrote to Mr. Nicht in which you said this is the understanding that could go into an agreement, is that correct?

A. Approximately that time.

Mr. RAICHLE: June of '55, June 13th.

By Mr. BERNSTEIN:

Q. June 13, 1955, that was immediately before the acquisition of the International Color stock?

A. Yes.

Q. Now, did you wish to have Mr. Nicht believe that you were interested in getting the Hearst business and lead him to believe that you were entertaining the suggestion that he was making?

A. Did we wish him to believe we were interested in getting the Hearst business? We were interested in getting the Hearst business, yes.

Q. And were you interested in communicating that to Nicht, that you were interested?

A. We told him we were.

Q. And when he suggested that you be his exclusive printer, were you interested in leading him to believe that you were considering that?

A. Did that thought go through my mind at that moment, you mean? I don't know.

2258 Q. What I am trying to find out; were you leading him on?

A. No, I don't think I was leading him on.

Q. When you wrote the letter to him saying that these were the understandings that could go into a contract, you said he would be the exclusive; were you intending to lead him on at that time?

A. I was putting in that letter what he made as his conditions, subject to approval by attorneys and subject to approval by the other members of our company.

Q. Did you tell him that, it was subject to approval?

A. Yes.

Q. You didn't say it in the letter?

A. No.

Q. You told him that orally?

A. Right.

Q. This was in 1955, before you bought International?

A. Yes.

Q. And—

A. Did I say it in that many words? No. I said, "Look, I'm not the whole show here, other people have to approve these things, so we will put them down and I will show them to them."

Q. Am I correct in this? You, as a businessman, you
2259 were not going to let Nicht push you in a corner; on the other hand, you didn't want to say to Nicht, 'I am not going to do it' because then you can't any longer consider Hearst's business or any other business from him, is that correct?

A. You ask a lot of questions. Say that question again.

Q. I'll say it simply. As a businessman, a good businessman, you did not want—

A. We didn't want to offend Nicht.

Q. You didn't want to turn him down, you didn't want to say under no conditions would he be exclusive, you didn't want to tell him that on June 13, 1955, when you wrote that letter?

A. If we had to turn him down we wanted to do it in a nice way.

Q. You wanted him to believe there was still some possibility for it?

A. There was up until the time that people other than myself said no.

Q. Was there a possibility of it up until—when you say that, you mean up until 1958, when you sent the letter to him saying this agreement is no longer in effect?

A. No, until Mr. Raichle said we shouldn't do it.

Q. In 1956?

2260 A. 1955, I think.

Q. Whatever the date was, we will see that from the record. In any event, until the time Mr. Raichle said you shouldn't do it, there was the possibility that you would be the exclusive?

A. Mr. Bernstein, I don't understand all the workings of the antitrust laws in late years. I had a very, very bad experience with the Government back during the war, so I didn't know whether you could make these agreements or not. I had a bad experience where a printing company created a monopoly and used the Government to kite its prices. We went ahead and made ink and we were told by the Government to stop making the ink, despite the fact we proved under the ruling of the Government these people could—the ink people could get together and they could raise the price of ink, and that you could not resist them by going in the ink business yourself. Mr. Raichle helped us out on that case down in Washington and we got the order set aside. Frankly, I don't know whether the Government takes the position one way that you can have a monopoly, and the other way that you can't.

Q. Mr. Koessler, we are trying to find out the facts. Mr. Raichle and I will argue this with the Court.

2261 A. I wish you would argue with him about the ink business.

Q. Right now we are trying to develop the facts. We can't reach any legal conclusions until we get all the facts, until we get all the honest facts, not the way we would like them to have been. I appreciate the fact that you have been candid, very forthright, and I would like, therefore, your continued cooperation along that line, to get the facts, not you and I engaging in a debate about law.

A. You asked me what was in my mind at a certain time?

Q. You don't know?

A. I can't tell you that.

Q. I would like you to reconstruct now—you have this letter in which you said to Mr. Nicht on June 13, 1955, that these are the understandings that you and he have reached as businessmen, that could go into a formal contract. As I understand your testimony, you have some reservations as to whether it might be legal or might not be legal because you don't know all the foolish ramifications of the law, so therefore as a businessman you would make that deal if it was otherwise legal, is that correct?

A. And if it was otherwise approved by other people in our company.

2261(a) Q. Of the other people in your company—

A. Not the legality of it, but the common sense of it, whether it was a good thing for us to do.

Q. In your opinion, as of June 13, 1955, when you wrote that letter to Mr. Nicht, if it were legal, in your opinion was it a common sense, good business, good thing to do?

A. Was it my—no, I didn't like the provisions of those things.

Q. So—

A. It was against our interest, economically, to make any agreement like that.

Q. You were not anxious, if you had your druthers you would not want to do it?

A. No.

Q. But it made good business sense not to tell that to Nicht?

A. It made good sense not to offend Nicht.

Q. You wanted him to believe there was still some possibility of working out that exclusive sales arrangement if you could do it legally, and you wanted him to continue to believe that until 1958 when you sent him that letter saying this signed agreement is not in effect?

2262 The COURT: Wait a minute. As I recall, he got a letter first from Nicht saying he can't go along with it, and then he reiterated, "We can't go along with you either, our Board and our lawyer won't." Wasn't the first move from Nicht? Yes, sir, the first move was from Mr. Nicht.

Mr. BERNSTEIN: Yes, sir, the first move was from Mr. Nicht.

By Mr. BERNSTEIN:

Q. Until Nicht made the move you wanted him to continue to believe there was some possibility that this could be worked out?

A. This is 1958; you are talking about a letter that was in 1955, three years earlier.

Q. I am talking about—let's talk specifics, Mr. Koessler, here is P-72—

The COURT: All I want to do is get the order of things; as I remember, Mr. Koessler sent down some paper that both principals signed, which is unusual, as I understand business

normally; however, in due course Nicht said that paper, 2263 that we have been talking about, is out because the Board won't go along with it and he considered it a nullity. In due course Mr. Koessler said, "My people won't go along with it, it is a nullity indeed."

Mr. BERNSTEIN: Right.

By Mr. BERNSTEIN:

Q. When you told Mr. Nicht that was a nullity, you said to him in D-5, "I have had no opportunity to present this agreement to our own Board of Directors for their approval." Now, was that something that you were saying to him in that particular fashion because that was so, or was that something that you were saying to him as a business way of saying, 'Well, if you don't want it, I don't want it,' and really you didn't want it anyway; so you were saying to him that you didn't want this contract from the start, you were saying to him as a nice business phrase, "I have had no opportunity to present this to the Board of Directors"?

A. As a matter of fact, I hadn't taken it to the Board of Directors, I was rather afraid to.

Q. Who was on the Board of Directors?

A. My brother Kenneth, my son and Mr. Hammond, 2264 and the rest of them.

Q. As a matter of procedure and policy within your company, when you got the Buffalo Color Press agreement to buy the equipment, and so forth, did you have to get their approval first, or was it a matter of business, you make the decisions, they generally go along with it, they respect your position in the company?

The COURT: Let me ask you; what is your point? Are you trying to leave with me the impression that Koessler lulled Nicht into something and then Koessler grabbed International Color Press down there in Wilkes-Barre and said, "I got it, things are over with"?

Mr. BERNSTEIN: Yes, I am trying—

The COURT: How do you justify Nicht's letter in the light of that interpretation wherein he said to Koessler, "All that is done, this so-called plan we had"? Why would he write such a letter?

Mr. BERNSTEIN: He had the oral understanding that that

2265 was going to work, he was going to get the commission anyway. Mr. Koessler said he had been receiving commissions on these very papers mentioned in Schedule

A. Mr. Koessler is still paying a commission on these papers.

The WITNESS: I am not.

Mr. BERNSTEIN: Some of them. Mr. Koessler says he is doing it for the reasons he stated.

The COURT: You don't go along with those reasons?

Mr. BERNSTEIN: That is correct.

The COURT: All right.

Mr. BERNSTEIN: So——

The COURT: It is true, isn't it, that nobody, Koessler or anybody else, can print that pink stuff unless King is obliged to give it to them, to the paper. They can cut that off like a flash from a paper?

Mr. BERNSTEIN: King?

The COURT: King controlled these artists and cartoonists and painters. As I get it, they are short-term contracts.
2266 If they want to pull that away from the Buffalo News, for example, they pull it away and nobody can print it, Koessler or otherwise?

Mr. BERNSTEIN: They can't do it legally. Part of the purpose of this suit is to stop it.

The COURT: I am talking about King.

Mr. BERNSTEIN: The primary purpose of this suit is to stop King.

The COURT: I refer to one thing; it has been recited here that the commitment of King to International was only a matter of a few months to go. That isn't a perpetual right to have King Features?

Mr. BERNSTEIN: We are talking about two different things.

The COURT: I'm not. I'm talking about these attractive features.

Mr. BERNSTEIN: These attractive features were under contract and some newspapers had contractual rights with King so that King could not cut them off. If King would cut
2267 them off by reason of the fact that the newspaper wasn't giving them the printing business or King would charge more for a feature because the newspaper wasn't giving King printing business, that would be illegal——

The COURT: A tie-in?

Mr. BERNSTEIN: A tie-in, and this lawsuit is seeking to stop that.

The COURT: Mr. Koessler said he was being blackjacked into it.

Mr. BERNSTEIN: This lawsuit seeks to stop that. It is being tried in several phases, in several issues. Right now we are talking about another issue, not the tie-ins. NEA is charged with having tied in to, and that is the subject for another hearing by this Court.

The COURT: When is that going to be?

Mr. BERNSTEIN: We would like the Court to schedule that as soon as possible. We asked Mr. Stevens to do that as part of this proceedings and he said he was not ready to do it. 2268

The COURT: We will talk about that. Okay. Mr. Bernstein, can I disagree with you?

Mr. BERNSTEIN: Yes, but let's discuss that later.

The COURT: If you've got something to say evidentiary in nature, touching on my comments, I want to hear it, because I am looking for light here, and you appreciate that normally we could not run a trial like this before a jury, but there is no jury, and if you have something that you think will enlighten me, Mr. Koessler, say it now.

The WITNESS: All right. Mr. Bernstein just said to you, Judge, that if King Features, as a consequence of losing a printing contract, cancelled the features or even if they raised the price of the features it would be illegal. Under that consent decree it is not. In other words, if the newspaper cancels the printing contract, the newspaper is specifically— 2269 or the syndicate is specifically authorized and permitted to raise the prices, they only have to wait three months to do so.

Mr. BERNSTEIN: May I—

The COURT: Here, that is another matter. You appreciate that the Government and King, Hearst, et cetera, got together and in some way solved their problem in this lawsuit. That was not specifically before me, except for general approval. I know you grieve about it, but I don't want to take the time to get into that.

Mr. BERNSTEIN: I wonder if I could take thirty seconds so that Mr. Koessler would have a different frame of mind—

The Court: Tell him that in the hall afterwards.

Mr. BERNSTEIN: Very well, your Honor.

2270

By Mr. BERNSTEIN:

Q. Is this a fair summary or is this an unfair summary of what we have just been saying up until now; that from the time that Nicht first discussed with you the printing of the Toledo and Erie newspapers, before you got International and he was discussing with you giving you the printing of the Hearst business that he would get and have it printed in Greater Buffalo Press, have it printed in Lufkin, have it printed in Sylacauga, and that Greater Buffalo Press and Lufkin and Sylacauga would be the only printers for Nicht, and that Nicht would be the only—he didn't say that?

A. When was that supposed to have taken place?

Q. I am trying, if I can, to summarize the relationship, the business relationship between—I am going to say you, meaning Greater Buffalo Press, and I am going to say Nicht, meaning King Features—I am trying to summarize the business relationship with you from the period of 1955 or 1954 until 1958. And prior to that time, prior to 1954, I gather from your testimony that you were taking business away from him, you were growing and you were competitors, you hadn't done any printing for him?

A. We took some business away from him, relatively
2271 small. We grew through getting the business of the newspapers that printed their own. We took some.

Q. Were you beginning to take more and more away?

A. No, it was difficult. The jobs that King had, they had by virtue of tying them up with the features, and you could not pry them loose unless the newspaper got awfully mad.

Q. So that he made the overture to you about printing the Erie or did you seek it from him? About printing—what were except retaliation."

A. Yes, yes—

Q. Toledo, Erie and Youngstown, he made the overtures to you?

A. That is right, to get a lower price so he would make more money on it.

Q. Beginning with that time your business relationship with Nicht changed because up until that time he was not a customer of yours, is that correct?

A. Well, if that's a change, now we are doing some business for him, yes.

Q. That was about the first time; certainly not prior to that did he talk about being the exclusive agent for Greater Buffalo or he didn't talk about giving you Hearst business; it was starting with the Toledo, Erie and Youngstown runs that he began those conversations?

2272 A. Yes. I should say that is about the time, yes.

Q. And you began to have more and more contact with him with respect to doing printing for him, is that correct?

A. Yes, I imagine such times as we met, which wasn't too often, probably once or twice a year, he would talk about the printing we might do for him, and prior to that time he sent salesmen up here to try to get us to print for King, and we could never give him the kind of prices that International was giving him.

Q. And were you beginning to have more and more frequent telephone conversations with him?

A. No.

Q. Was most of the communication done by letter?

A. Most of the communication was done—he would call up—whatever letters there were, I think you have.

Q. Otherwise it was either by letter or these telephone conversations, infrequent meetings?

A. Infrequent meetings.

Q. And then as he discussed you printing more business for King, as he discussed that, he tied that in with being the exclusive sales agent for you, and then you felt it was good business not to offend him and to let him believe that was possible, up through 1958 when you wrote this letter and said it
2273 was a nullity?

Mr. RAICHLE: He wrote the letter. When Nicht wrote the letter.

By Mr. BERNSTEIN:

Q. And you responded to Nicht's letter?

A. We think it is good business not to offend anybody. We didn't want to offend Nicht as a potential customer and as a customer, if we didn't have to.

Q. Right. So if you didn't have to offend him, you wanted him to believe that up through 1958 there was a possibility that he would be exclusive sales agent?

A. No, because even that is corrected in Mr. Graustein's proposal, they were not going to be the exclusive sales agent. A lot of those things were taken out of there.

Q. But during that time he was discussing with you that—you can't use the word exclusive—Greater Buffalo will keep its customers, King will keep its customers, and on new business, if Greater Buffalo got it, King would get a commission on it?

A. It didn't have to be discussed that we were going to keep our business customers because we were. I don't think it had to be discussed that he was going to keep his business, if he could.

2274 Q. When you say that do you mean each of you understood that?

A. I understood it. I am sure Nicht understood it because he was not giving up anything.

Q. What about new business?

A. We spelled out a certain number of accounts, four or five of them, and I said to Nicht, or proposed tentatively, "You can be the exclusive sales agent for everything except this." Actually, in practice, there wasn't anything. There wasn't very much real potential business.

Q. If some should develop you led him to believe he would have it?

A. We wrote those letters—I told him that I could not promise him anything, all I could do is take up the suggestions he made with our people.

Q. All right. I show you P-41 in evidence, that is a letter dated February 9, 1956. P-41 in evidence is a letter from you to Earl Anderson of the Buffalo Color Press?

A. Yes.

Q. Dated February 9, 1956, and that is before the time that you bought Buffalo Color Press?

A. Yes.

Q. You say to him: "Dear Earl——"

2275 Mr. MOORE: Wait a minute, not before.

Mr. BERNSTEIN: I apologize. I meant it is after. October, 1955 is the date. I am sorry.

By Mr. BERNSTEIN:

Q. It is after you purchased the Buffalo Color Press and were printing for NEA?

A. Yes.

Q. You say: "Dear Earl: I called Frank Nicht on the Rome, Georgia matter Tuesday and he sent me this wire today, 'Rome, Georgia contracts were negotiated last year embracing supplement printing and Feature budget.' I don't know if this is

within or without the rules but I sure wish to hell this poaching would stop. Kindest regards." You were writing this to Earl Anderson of NEA?

A. Right.

Q. You say you called Frank Nicht on the Rome, Georgia matter Tuesday; what did you tell Nicht on the Rome, Georgia matter when you called him?

A. I told him that NEA was squawking about him taking jobs away from them by combining the features and the printing together.

Q. What did he say?

2276 A. He said that is exactly what he did. He intended to—he was going to continue to do it.

Q. He sent you that wire that you quoted there?

A. Yes.

Q. What does the wire mean?

A. He sold the job by combining the features and the printing.

Q. He said, 'Rome, Georgia contracts were negotiated last year embracing supplement printing and Feature budget.' What does "Feature budget" mean?

A. I don't know, but it is my understanding he sold the combination package of the features and the printing.

Q. And did he tell you therefore he felt that was his account and he was going to keep it?

A. Sure, he was going to keep it.

Q. Did he tell you that?

A. I don't know, apparently it certainly was intended.

Q. What I am trying—

A. He was already printing it.

Q. Why did you call him?

A. Because Earl Anderson from NEA asked me to.

Q. And now you make this statement: "I don't know if this is within or without the rules but I sure wish to hell this poaching would stop." Did you mean that you preferred, as far as Greater Buffalo Press was concerned, you preferred that NEA keep its accounts, Greater Buffalo keep its accounts, King keep its accounts and there be competition for the new business?

A. No, I didn't mean that. It didn't make a bit of difference to me. What I meant was this, that NEA was squawking that Nicht was committing these illegal sales, or devoting himself to securing these sales by illegal means, and they asked me

to call him, call his attention to it, and I did it. It didn't make any difference to me if NEA got the job or King, we were printing for both.

Q. We will have some letters later—

A. But they were bothering me, both of them, and I would like to get rid of the bother. NEA calling me, King calling me, everybody squawking, I wanted to get rid of that annoyance.

Q. It did make that difference to you, and didn't it also make a difference—I think we will have some letters here later on—let's see if this conforms to your present recollection without the letters; isn't it a fact if—we have got the next letter, let's look at P-42 in evidence. P-42 in evidence is another letter to you from Mr. Anderson—no, it isn't, it goes to your brother, Kenneth Koessler. He says—isn't the effect of
2278 this letter—would you read it over, please—we won't take the time to read all of it.

The COURT: Read that during the recess. We will take a short recess now.

(Thereupon the Court was in recess at 11:20 A.M.)

2279 (Proceedings resumed, pursuant to recess, commencing at 1:15 P.M.)

JOHN WALTER KOESSLER, having been previously duly sworn, resumed and testified further as follows:

CROSS-EXAMINATION BY MR. BERNSTEIN (CONT'D.)

Q. Just before the recess, Mr. Koessler, we were exploring the question of whether it made any difference to the Greater Buffalo Press, as a printer, as to NEA's competition with King and its complaints that King was taking away some of its customers. I show you P-42 in evidence, a letter from Mr. Anderson, dated March 4, 1960. He is talking about the Sioux City, Iowa Journal. He says: "Dear Kenneth: You have been aware of the difficulty we have had in holding the run at the Sioux City (Iowa) Journal due to the low quotations from King Features service." In the next paragraph he explains what kind of run it is. In the next paragraph he says: "In order to hold this run, after taking full advantage of the fine service we have given them over the years and every possibility in
2280 the baggage rates, we had to make a quotation here that brings your printing rate to \$15.82 per thousand, F.O.B. Buffalo. I know you and Walter don't like this one, and

I can assure you that it is just as tough on us." He then makes another two sentences in there and then he says something else in the last part of the letter. Mr. Koessler, doesn't this show in this letter that NEA was telling you that he had to give you a lower printing rate because of the price that he had quoted to the newspapers and, therefore, in order for NEA to get the business, he had to reduce your printing rate, is that correct?

A. That is what he said in the letter, yes.

Q. Now, P-43 in evidence is your reply to Mr. Anderson, dated March 15—

Mr. STEVENS: I object to the characterization, let the witness say what it is.

By Mr. BERNSTEIN:

Q. I will withdraw the question, and ask you, Mr. Koessler, to look at P-43 and P-42, and I invite your attention to the third paragraph of P-43, talking about Fargo and Sioux Falls, and look at P-43, the first paragraph, and I ask you whether or not P-43 is a reply to P-42?

A. You are not talking about the same thing. You are getting yourself all confused here, Mr. Bernstein. You are talking about Sioux City here; this one has to do with Sioux Falls.

Q. Are they two different papers?

A. Yes.

Q. Is P-43 a reply to P-42?

A. P-43 is a reply to the last paragraph of P-42.

Q. Very well. In P-43 you say, "Dear Earl: Frank Nicht has been in the hospital for the past three weeks. When he returns to the office I am going to visit with him and tell him that the policy being pursued is just breaking down the market and returning nothing to him except retaliation."

The COURT: Wait a minute, read that again. "I am going to tell him——", what? Give me the date of this communication?

Mr. BERNSTEIN: March 15, 1960.

The COURT: Read that again, please?

Mr. BERNSTEIN: "When he returns to the office I am going to visit with him and tell him that the policy being pursued is just breaking down the market and returning nothing to him except retaliation."

2282

By Mr. BERNSTEIN:

Q. Did you talk to Mr. Nicht?

A. No.

Q. And what policy were you referring to?

A. I didn't talk to him about it.

Q. When you wrote to Mr. Anderson you said that when Nicht returned to the office you were going to tell Nicht that the policy that Nicht was pursuing was breaking down the market.

A. I was still referring to the policy of tying up the features and printing.

Q. Who printed that job, the Sioux City (Iowa) Journal referred to in P-42?

A. We did.

Q. For NEA?

A. Yes.

Q. Did you have to reduce your printing rate to NEA as Mr. Anderson suggested?

A. I think we did temporarily, then they arranged to get to reduce the section to eight pages, we got back on the regular scale basis.

Q. Did you reduce your price as a result of King's lower quotation to the Sioux City Journal?

A. We reduced our price in accordance with the request of NEA, for the moment.

2283 Q. For the reasons that Mr. Anderson stated in P-42?

A. That King had put in a lower price, yes?

The COURT: Let me ask you, have we ever had a history of this Nicht at all, where he came from, whose man he was?

Mr. BERNSTEIN: We will get that from Mr. Gorman.

The COURT: Is he from the old Hearst outfit or not? Is he one of the originators of the Hearst dynasty?

Mr. FELDMAN: I think he had been with them about thirty years.

The COURT: Thirty years beginning when?

Mr. FELDMAN: At the time of the beginning of this lawsuit.

Mr. BERNSTEIN: In the thirties sometime.

Mr. FELDMAN: It is in the deposition, he worked up.

The COURT: You mean he had been there in 1900 with old Hearst?

Mr. FELDMAN: No, since the thirties. He became head of King Features syndicate, the sales department, handling the

King, and he is writing to Mr. R. K. Rogers, who was acting in Nicht's capacity at that time, and this letter, if I can sum it up briefly—

Q. May I look at it?

A. Yes.

The COURT: Is that letter in the case?

The WITNESS: No, Judge. It explains what King Features can do to somebody.

The COURT: Put it in here. Is that something you people know about, have you considered it?

Mr. BERNSTEIN: Let's have it marked for identification.

(Thereupon letter referred to was marked plaintiff's exhibit P-100 for identification.)

The COURT: This is something that Mr. Koessler thinks is important to his defense. Do you know about it?

Mr. BERNSTEIN: I haven't seen it myself. I am sure it is an authentic document. I would like to get a copy.

Mr. RAICHLE: There is a particular paragraph I 2289 think you would like to have.

Mr. BERNSTEIN: May I read it first?

Mr. RAICHLE: Yes.

The COURT: Why read it? You were cross-examining and this man asked for a certain letter which he wants to make an explanation upon. Let him go. You can cross-examine him.

The WITNESS: Judge, this is a letter from a salesman at King Features reporting back to the person in authority at that time, Mr. R. K. Rogers, an assistant to Mr. Nicht. This has to do with the Rome, Georgia account here that Mr. Bernstein just examined me about.

The COURT: You have an explanation about it?

The WITNESS: No, I gave the explanation.

The COURT: You think this is important?

Mr. RAICHLE: There is a paragraph that you wanted to read to illustrate?

The WITNESS: It illustrates what King Features does to its newspapers that cancelled the printing part of the agree-
2290 ment when they have a printing-feature tie-in and this salesman is telling Mr. Rogers that King Features got this Rome, Georgia job from NEA, took it away from NEA, and they did it by combining the features and the printing. Then some time in 1959 or somewhat earlier Southern Color Printing some along and took it away from King Features.

By Mr. BERNSTEIN:

Q. By combining what?

A. I don't know.

Q. They didn't combine King Features by taking it away?

Mr. RAICHLE: Read the paragraph.

The COURT: Read the paragraph you think is pertinent.

The WITNESS: The paragraph points out that King Features does raise the price of the features.

The COURT: Read it, Mr. Koessler.

The WITNESS: "Then I told him we could continue our present budget of daily features, plus the following
2291 Sunday pages; Blondie, Barney Google, Beetle Bailey, Phantom, Mandrake, Flash Gordon and Steve Canyon, plus Steve Canyon daily for a total rate of \$108.50 per week. This represents an increase in weekly billing of \$48.42; as the daily features which they are now receiving they are getting for \$60.08 per week." Then over here, another paragraph, the salesman says, talking about the publisher, "He seemed genuinely disturbed over the quotation of \$108.50 for the budget of features and I am afraid he is not going along with us at that rate. However, at this time I do not feel we should rush in with any offer of a reduction."

Mr. BERNSTEIN: I offer it in evidence, your Honor.

Mr. STEVENS: May we read it, please?

The COURT: Barney Google, is he still around?

The WITNESS: Apparently.

Mr. BERNSTEIN: I offer P-100 in evidence.

Mr. RAICHLE: No objection.

2292 Mr. STEVENS: Objection on behalf of NEA as to the paragraph which refers to it, the last paragraph. I don't see any way in which we could cross-examine or offer evidence upon it, it is not within Mr. Koessler's knowledge.

The COURT: This is offered as a communication not between you nor Mr. Koessler.

Mr. STEVENS: Yes.

The COURT: It is just an advisory piece of literature in the lawsuit.

Mr. STEVENS: Correct.

The COURT: To characterize a course of conduct.

Mr. STEVENS: To characterize a course of conduct within King as to what it did after it lost a printing contract and how

it raised the price to the Rome newspaper following that. There is a paragraph that relates to NEA.

The COURT: Do you offer it against NEA, Mr. Bernstein?

Mr. BERNSTEIN: I offer it against all parties here, sir.

The COURT: I haven't read this. I will reserve 2293 decision.

Mr. STEVENS: Thank you.

Mr. BERNSTEIN: Can it be received against Greater Buffalo?

The COURT: No. I don't know, it may be—you charge a conspiracy?

Mr. BERNSTEIN: Yes. I said as against Greater Buffalo, reserving decision as against NEA.

The COURT: Against each?

Mr. BERNSTEIN: I offer it against both.

The COURT: I reserve against each. I also have 73.

Mr. BERNSTEIN: I was looking for that yesterday. I offer for identification document number 96, dated December 9, 1955—

Mr. STEVENS: Is that what you previously identified as exhibit 99?

Mr. BERNSTEIN: I can't locate that.

Mr. STEVENS: I have it here that just before we started talking about P-100 you offered something identified as document 96 as P-99.

Mr. BERNSTEIN: I thought I did. I don't have the piece of paper.

2294 The COURT: You were asked about your early beginning, Mr. Koessler, about your initial investment, Charlie Frieberg's initial investment, and how ever since 1926 things have gone well. Let me ask you about Eastern Color Print, I think it is called, are they still alive?

The WITNESS: Yes.

The COURT: There's a thing called Southern Color Print, is that Hornady's?

The WITNESS: Well, in a way it is Hornady's.

The COURT: That is still alive?

The WITNESS: Indeed.

The COURT: Then out near Lufkin, Texas, there was some competitor. What do you call that?

The WITNESS: Acme. Was it in Acme in California?

The COURT: I don't know. Is there competition out there?

The WITNESS: They said we were competition to them. How it could be, that far away——

Mr. BERNSTEIN: Lufkin is Greater Buffalo's plant.

The COURT: I know what Lufkin is. There is a color
2295 print outfit out there, are they still alive?

The WITNESS: Acme Color Print, they are. They are part of the Los Angeles Times.

The COURT: NEA, is that still alive?

The WITNESS: Yes.

The COURT: King?

The WITNESS: Yes, sir.

The COURT: Are they healthy?

The WITNESS: Yes. Another one, World Color.

The COURT: I am asking you this as an expert. Except for the rise in general cost, the price of everything to the public, cars, newspapers, everything; is there, in your opinion, competition in the color printing game now?

The WITNESS: Indeed, very much. As a matter of fact, we haven't raised our prices in twelve years, it is so competitive. In addition to that, the comics have suffered readership, television has taken a lot of readers away from the comics, made the comics less interesting to them.

The COURT: I take it from your recent comments,
2296 which I did not know, that you are trying to take up the slack with the advertising bit?

The WITNESS: Exactly.

The COURT: Now, I am just trying to feel my way through this thing. Can you tell me anything more? You see, the Government says that by reason of your combination, your intentional effort to choke off competition, the public did not get a fair shake, that is what it all amounts to. I am talking about price.

The WITNESS: Our costs have increased at a rate of about three percent a year. The ordinary labor cost increased at a rate of three percent a year. In twelve years that is thirty-six percent. In twelve years we haven't raised the price of our printing, largely because of the newspapers threats to print their own or the possibility that they could print their own. We don't want to raise the issue with them.

2297 The COURT: I take it that despite all these changes that have occurred, you have an excellent operation?

The WITNESS: We think so.

The COURT: You are happy, you are making money?

The WITNESS: Yes, sir.

The COURT: But you say that you now compete actively?

The WITNESS: We have the same competitors we had in 1955.

The COURT: I am asking these questions, if you don't mind, because we have no jury. I am expecting I will receive frank, flat answers without reservations.

The WITNESS: Without reservations.

By Mr. BERNSTEIN:

Q. On the Rome, Georgia paper we just discussed, I gather that in 1956 you had to reduce your printing price to NEA for the Rome, Georgia matter?

A. We didn't print—King got that job. King took it away from NEA.

Q. I meant the Sioux, North Dakota paper.

A. Sioux City?

2298 Q. Sioux City.

Mr. STEVENS: I think, because there seems to be some confusion in Mr. Bernstein's mind, and very understandably, it should be pointed out that P-42 in the earlier portions refers to Sioux City, Iowa; and P-43 that Mr. Koessler very correctly indicated, refers not to Sioux City, Iowa, but to Sioux Falls, South Dakota; and the two cities, although they happen to be in the same general region, are, as any map will indicate, 50 to 75 miles apart and are totally separate communities. We should not be casual or inaccurate in referring to these communities.

By Mr. BERNSTEIN:

Q. May I clarify that? In P-42, Mr. Anderson's letter to you, in the first paragraph he talks about the Sioux City—

The COURT: Excuse me. Let me ask you; you heard Mr. Koessler, I assume, and you heard my probing him about

2389 these changes, this progress that was made. He flatly says he is competitive. That is, I hate to use the expression, my daughter uses it—the name of the game. Do you think now they are competitive?

Mr. BERNSTEIN: I think—

The COURT: That they are trying to do what is right or not?

Mr. BERNSTEIN: We are trying to do what is right, too.

The COURT: I know that.

Mr. BERNSTEIN: What Mr. Koessler—

The COURT: I don't think you are a persecutor, I know you too well, you've got a job to do here. I am trying to be practical. Maybe you haven't probed in recent years, you think something happened in former years, but tell me about today.

Mr. BERNSTEIN: That is what I was trying to do.

2390 The COURT: I opened Sylacauga, I had some limitations on that. I thought it was right to be oppressive. I didn't know that Hornady was using it to advantage, sending out copies of my decree so that he could cooper somebody as I view it. What has happened now?

Mr. BERNSTEIN: I think the letter that your Honor has before him that Mr. Koessler put in evidence, P-100, shows that Hornady—shows that on that particular newspaper in North Dakota—

The COURT: I am talking about Hornady down in—

Mr. BERNSTEIN: It refers to Hornady, that refers to Hornady. That letter says that after NEA took the business away from King because Greater Buffalo quoted a lower price—

The WITNESS: Wait—

Mr. BERNSTEIN: —Greater Buffalo quoted a lower price, NEA took the business away, Hornady came in and took the business away from NEA. That letter is a letter from Nicht's salesman, intra-company, and he said that Hornady is having trouble keeping this account and we can't get it back
2301 from him, NEA is going to get it back, with the printing being done at Greater Buffalo. Mr. Koessler said before—

The WITNESS: Wait a minute—

The COURT: Look—

The WITNESS: I'm sorry.

The COURT: You must realize that every once in a while I want to talk to the lawyers, and you must realize that I have hundreds of lawsuits during the year. This one pops in and out and I have to get some recall on these things, and I ask the lawyers to brief me once in a while.

Mr. BERNSTEIN: Mr. Koessler testified before that Greater Buffalo was then able to get the run back and get a higher price. So I draw the conclusion that when Mr. Koessler says there is competition, he means there is competition among the syndicates, King, NEA, for the newspapers business, but as far as competition among printers, Mr. Koessler as a
2302 printer no longer has competition with International for printing King's business, he's got it.

The COURT: Has he killed somebody off——

Mr. BERNSTEIN: Yes.

The COURT: ——or has he done better?

Mr. BERNSTEIN: He killed——

The COURT: Who?

Mr. BERNSTEIN: Killed off the business that was otherwise available to World Color Press or Acme or some other printer that Hearst and King would have had to get in there——

The COURT: Are they dead?

Mr. BERNSTEIN: They are not dead, they are doing commercial work, circulars.

The COURT: This is a specialty game. You may think I am being silly when I talk about the years that I was interested in the comics, but comics were ridiculous, they came out in a jargon of color, and if you were interested in the Katzen-
2303 jammer Kids or Barney Google, or whatever you wish, it didn't look quite right with blue gloves and a red nose.

Once in a while I look again, and it has changed, I know something happened. Now, if somebody can make an image, for those who wish to read it, that is palatable, without having blue gloves and overprinting, I suppose it is important.

Mr. BERNSTEIN: He shouldn't be stopped.

The COURT: Are these people dead because somebody devised—I have a notion, maybe I'm wrong, that out of this early \$1,000 beginning a process began that has swept the country. That is not unique with me, I mentioned the Wilson brothers down here locally, who by their basic genius were outstanding people with Ford, people who had very humble beginnings, and wound up as K. R. Wilson in this town, I don't
believe with any formal education, very wealthy men. I

2304 take it Mr. Koessler is a wealthy man. I assume he is.

He is a man of substance in the money field, let's say that. I am trying to find out whether this was progress, Mr. Bernstein, or whether, despite all this letter writing that I have seen, it is a scheme. What did he have to sell the field unless he had something out of that \$1,000 beginning with Charlie Frieberg and himself. They had about \$5,000 in that pot originally. How did it happen? You can't outscheme Hearst with \$5,000.

Mr. BERNSTEIN: He did.

The COURT: All right.

Mr. BERNSTEIN: The evil of this is, your Honor, it is both progress and it is also a scheme. The evil of it is this; neither Hearst nor—let's say Hearst—

The COURT: Look, I have been in San Simeon, I know what the Hearst dynasty was. You mean Mr. Koessler in 1926
2305 outscemed Hearst with \$5,000, \$1,000 of which was Charlie Frieberg's?

Mr. BERNSTEIN: I mean he did it in 1955, and he did it very well. Here is why, if you will permit me—

The COURT: I knew Charlie Frieberg a bit. I knew Charlie Frieberg as a young man, he was a respective sheriff here. He apparently had a few thousand dollars, and he put \$1,000 in this. You know, I was admitted in 1933 in the depths of the depression, and the best job for a young lawyer, unless your father was wealthy, was with the banks. I was with the Buffalo Savings Bank. There were two journals in this town, one the International Gazette, and the only man I knew was Cliff Bush who used to hang around the County Hall, and the other was the Buffalo Daily Law Journal, with a fellow named O'Mara.

They were hotly competitive. I had that choice, I could
2306 publish that foreclosure notice in either the Buffalo

Daily Law Journal or the International Gazette and meet the Civil Practice Act, and if there was ever competition, mark you, it was then, and at that time I didn't know Mr. Koessler, never heard of Mr. Koessler, but that was the International Gazette, it was a throwaway out in Black Rock. I used to live in Cold Springs before it changed, there was some other paper, I don't know what Mr. Koessler said, but I know this background. What did Mr. Koessler say he was originally, a toolmaker?

Mr. BERNSTEIN: He was a reporter, his father was a toolmaker.

The COURT: Well now, what I am trying to say to you, I have been in San Simeon, I know a little bit about Hearst. You say that out of \$5,000 suddenly Mr. Koessler, without being unique, because competitive with the Hearst dynasty?

2307 Mr. BERNSTEIN: Yes, because in 1955 Mr. Koessler had a unique talent to sell and he was going it—

The COURT: Sell?

Mr. BERNSTEIN: Yes.

The COURT: You mean because he speaks so definitely and

frankly? What do you mean Koessler's unique ability to sell? Do you mean he had a tool behind him, like a blackjack?

Mr. BERNSTEIN: No, no, he had a superb talent of printing quality color comic supplements, taking old abandoned—

The COURT: That is what I am saying. Did he have a better mousetrap?

Mr. BERNSTEIN: He had a better mousetrap, and here is what happened, he was pitted with that better mousetrap against Hearst, through King and Nicht, who had no printing to sell—

The COURT: And no mousetrap.

Mr. BERNSTEIN: And no mousetrap, and they were making profit on International's printing, and at that period of
2308 time Hearst was milking International, keeping them in a low condition, and Hearst had to do something, and Koessler knew Hearst had to do something. So when Hearst came to Koessler and said, 'Let's join forces, I'll be the sales agent, you be the printer', Koessler led him on, led him to believe that was going to happen.

The COURT: I don't have any impression that in this printing game or this newspaper game that it is nice to be a mourning dove, sitting there quietly carrying on your quiet song. I think this is a rough field, as indeed I think sometimes the law business is. I have no idea that everyone is a nice man. I am trying to figure out whether you have a case against these
2309 people. If we have the environment where we are all saints and some saint went wrong, we would punish the saint. If we are not all saints, you have to watch your back once in a while, don't you?

Mr. BERNSTEIN: Yes, sir.

The COURT: Now, the question with me, Mr. Bernstein, and I have great respect for you, is whether or not in this particular case we are supposed to take a standard of the mourning dove looking quietly in all directions without watching out back, or are we taking a standard of this, a highly competitive game wherein each one has to be watchful, and maybe there were attempts—this man said, "Look, I had a lawyer, several lawyers, they asked me to reject one and go somewhere else, and I found he would not write it", and so forth. I am trying to do the best I can in this jungle. Now, you see, somebody wins finally and somebody loses in this business. He has won, he is

an immense printing success. Nobody has been eaten,
 2310 I haven't heard about anybody being eaten; east, west,
 south and north. As you know, they had to divide in
 other directions, perhaps, but nobody has been eaten up here.

Mr. BERNSTEIN: Yes, the public has been eaten by what Mr. Koessler describes as the power of Hearst and the other syndicates to tie in the features. When the Government——

The COURT: Do you think that because it is a quarter now in my town for a Sunday paper and I guess about eight cents for the daily newspaper, that somebody has been eaten up due to Mr. Koessler?

Mr. BERNSTEIN: Mr. Koessler complains about being at the mercy of a syndicate that has the power to tie features in. The Government's position is that in this jungle, where you have this fierce competition, if both sides are wrong, what the Court
 2311 has to do now, twelve years later, is neutralize it, put them in a position where the syndicate can't have the power over the tie-ins.

The COURT: What do you want me to do, divest them of that Wilkes-Barre plant?

Mr. BERNSTEIN: I would like the Court, in a transition period within a prescribed time of let us say a year, to announce to King and NEA that Greater Buffalo will no longer print for you as syndicates, you don't do any printing, you have no printing to sell, you just sell features, and you make your election, if you want to be a printer, buy Sylacauga, buy Lufkin, give me back my investment because the Court is going to make me sell it, and then I will pit my ingenuity and talent, my ability to take machines and repair them against your printing ability, and if you don't want to print, all you do is sell features and don't tie them in because that is against the law.

The COURT: Do you think the Buffalo Courier-Express would be less than twenty-five cents an issue on
 2312 Sunday because of that?

Mr. BERNSTEIN: No, the Buffalo Courier-Express or any other paper will not be at the mercy of somebody who is not in the printing business.

The COURT: Twenty-five cents for a newspaper, eight cents, I guess, for a daily, maybe it is ten, I never buy it on the street; do you mean that is an unnatural progression of price when you think about how it started out? I don't remember, it used to be a nickel, it was fifteen cents for the Sunday sheet, a nickel

for the daily, I'm talking about in the thirties, and now it's eight cents and a quarter. Who is being killed?

Mr. BERNSTEIN: The public, the buying public of the newspaper isn't being killed, the newspapers itself is part of the buying public in that the newspaper——

The COURT: I haven't heard any interveners here that are being flushed down the drain due to excessive printing
2313 prices.

Mr. BERNSTEIN: If they made application to intervene the Government would object on the grounds that it is the Government's duty to protect the newspapers, and represent their interests.

The COURT: I think my image is this; if they made a motion to intervene here as friends of the Court, they would be here today, regardless of your belief on whether it is the Government's duty to protect them or not. This isn't a criminal action.

Mr. BERNSTEIN: That is the point, your Honor.

The COURT: I am trying to beat this thing into some focus wherein I can decide it, and you may feel that you have been hit upon hard——

Mr. BERNSTEIN: No, your Honor.

The COURT: I have to decide this fairly. I don't pre-judge it but I can't get away from my impression that this is the man who started out on a shoestring and suddenly he is
2314 the fellow that is knocking Hearst off his horse. Gentlemen, look, that is not in the nature of things, and I am not talking about Marion Davies, either. Go ahead.

By Mr. BERNSTEIN:

Q. Inviting your attention to——

A. Mr. Bernstein, in Sioux City, I think you were trying to make the point——

Q. Excuse me, Mr. Koessler, I am trying to examine you about P-99, and if we move along, Mr. Raichle will have the opportunity to bring out any features that you would like to have brought out. P-99 for identification, note the first paragraph, do you recall whether or not on or about December 9, 1955, you were in Mr. Nicht's office?

A. I couldn't say.

Q. Well, your personal contact with him was somewhat infrequent?

A. Yes.

Q. Do you recall how many times you were in his office after you bought International?

A. My recollection is that I was never in his office more than three or four times.

2315 Q. Do you recall his ever reading a memorandum to you on the occasion of being in his office?

A. I don't remember him reading anything to me.

Q. Now, do you recall whether or not after International Color Press stock was purchased Mr. Nicht said to you that he would like to look upon Greater Buffalo Press in the same light that he looked upon his relationship with International Color for more than thirty years?

A. I don't recall him saying that, but I hope that will never come to pass.

Q. You don't recall that conversation on December 9th?

A. No.

Q. Do you recall whether or not about that time he submitted a draft of a contract to his lawyers?

A. I know that they kept needling me constantly after Mr. Raichle told them this thing wasn't legal, they started right off working up some new scheme.

Q. Do you recall talking to him at about that time about the relationship with the Chicago Tribune, NEA and the Harte-Hanks deal? I invite your attention to the fourth paragraph in the memorandum, the first sentence?

A. No.

Q. You don't recall that. Do you recall any conversation with him about the meeting that he had with Mr. Walker
2316 in the Beverly Hotel after you had invited Mr. Walker to—excuse me—Mr. Nicht to meet with Mr. Walker at the Beverly?

A. No, never told me anything about that.

Q. Look at the next to last paragraph; do you recall having any conversation with him around December 9, 1955, about NEA, your printing for NEA, your purchase of Buffalo Color Press?

A. Well, not at that time, but prior he didn't want us to do any business with NEA.

Q. After the Beverly Hotel meeting what was the discussion with him?

A. He didn't like still doing business with NEA.

Q. Did he say anything about not trying to—did he say anything about a truce to you or—

A. No.

Q. Did he say anything about not trying to put King Features in NEA's papers around December, 1955?

A. No.

Q. Did he say anything to you after his meeting with Mr. Walker in the Beverly Hotel about not taking NEA's accounts, keeping their accounts and King keeping his own?

A. No.

Q. He didn't say anything along those lines?

2317 A. No.

Q. You don't recall?

A. No.

Mr. BERNSTEIN: I offer P-99 in evidence. It is the same kind of document—

Mr. RAICHEL: Objection.

Mr. STEVENS: Objection.

The COURT: Same ruling. That is Nicht's memorandum?

Mr. BERNSTEIN: Nicht's memorandum to himself.

The COURT: I am aware of what you said before about your reservations when we are all through. You consider these material to the mental operations of a co-conspirator, and I am not passing on that subject. I decline to receive these as any business entries of Nicht's company. I have my thoughts about whether or not they are pertinent to the alleged co-conspiracy. I will hear you eventually on that. But I thought I made it clear, I am sure I have, that, as a business entry, these
2318 notes I do not consider within the purview of the Federal rules on business entries. I sustain the object to them on that ground. I will hear all sides on the other point. NEA persistently says, "I object on the grounds it doesn't include me." Your conspiracy charges them as, at one time, at least, entering the conspiracy, and if you are right on this, then you claim that these are pertinent as to them—

Mr. BERNSTEIN: That is right.

The COURT:—on the conspiracy?

Mr. BERNSTEIN: That is correct.

The COURT: All right.

Mr. BERNSTEIN: May I take thirty seconds to remind your Honor that Nicht's memoranda fall in at least three categories. One category is memoranda Nicht makes to his superiors re-

porting upon what happened. Another kind of memorandum is one just shown here now, with the document heading 2319 memorandum, according to the testimony we have described it as a self-memorandum, a memorandum he writes to himself and keeps in his own office. The third kind of memorandum is a memorandum Nicht writes to himself in which he says what he is going to do, a reminder of things to take up with people. The three are in somewhat different categories.

The COURT: Be sure and separate them positively, because I think when I go home and say what I am going to do tomorrow, and if I say something about you and my intentions for tomorrow, and for some reason we became in controversy, I could hardly see how the sense of fairness or justice would permit that to be used against you if I wasn't around. Many of these rules have been kicking around for years in the courts, and the lawyers read all these decisions, but when you get down to it they are common sense, and the exceptions are 2320 because, in the nature of things, things are assumed to be true because of the circumstances under which they are made. Here is a fellow named Nicht that, at least in this court room, hasn't had any halo around him, making notes, what he is going to do, when he is going to get Koessler, NEA, or what have you. Doesn't it occur to you that this kind of proof is a little fuzzy, doubtful? I haven't looked up the cases on it, but separate those things into the class you claim they fall in and we will review them all.

Mr. BERNSTEIN: Very well.

The COURT: We will take a short recess.

(Thereupon the Court was in recess at 2:20 P.M.)

(Proceedings resumed, pursuant to recess, commencing at 2:50 P.M.)

2321 By Mr. BERNSTEIN:

Q. Mr. Koessler, I show you P-44 for identification. P-44 is a memorandum dated March 30, 1954, to Eli Minton, of Dallas, signed H. W. W., and I represent that is Mr. Herbert W. Walker. I invite your attention to the fourth paragraph, and Mr. Walker says, in talking about Lufkin, Texas: "I first checked with Kenneth Koessler, since Walter, the head guy there, was in Florida at the time. It isn't necessary to go into any detailed report of the talks with Kenneth, other than to say that he reported that the Koesslers did not want to set up a

plant there, felt there was really not enough business to justify it, realized that this would simply increase the overhead for them, since their plants at Buffalo and Dunkirk could print everything in the southwest now without being hard pressed."

The COURT: The date, please?

Mr. BERNSTEIN: March 30, 1954.

By Mr. BERNSTEIN:

Q. Now, P-92 in evidence, Mr. Koessler, shows that on June 3, 1954, two months later, you said that you signed a commitment to purchase 15,000 ton of newsprint for Lufkin, 2322 Texas, when that plant would open. Now, I ask you, in March, 1954 were you having some discussion with your brother Kenneth concerning the advisability of opening the Lufkin plant?

A. Kenneth—Walker says Kenneth told him that he didn't think we were going to open a plant down there. I gather Kenneth was not telling Walker our plans, he didn't want him to know.

Q. You don't recall that at the moment, you are surmising that from the memorandum and from the fact that you actually did open the plant, you did go ahead? You don't have a present recollection of what Mr. Kenneth Koessler told him?

A. I wasn't there, I was in Florida.

Q. My question to you was, did you have a conversation with your brother Kenneth concerning the inadvisability of opening up the Lufkin plant?

A. No, I don't think Kenneth was ever against opening up the Lufkin plant. He wasn't going to tell Walker.

Q. Your testimony is clear, that as far as you and Kenneth were concerned, Kenneth never expressed any doubts to you about the advisability of going ahead with the Lufkin plant in March, 1954?

A. No.

Q. All right. Now, look at the fifth paragraph down. It says: "After Walter's return, I went to Buffalo to see him." 2323 Who is he referring to?

A. Me.

Q. "After Walter's return, I went to Buffalo to see him. Walter said they had not yet definitely decided to go ahead with the plant, but that may be more of a way of saying that everything has not been settled, because I believe they intend to go ahead." At that time did you intend to go ahead?

A. Yes.

Q. At that time did you tell Mr. Walker that you hadn't definitely decided to go ahead with the plant?

A. I could have. I don't recall.

Q. That was—well, from the fact that—if you had told him that, from the fact that on June 3rd you first—

A. I didn't want him to know we had definite plans, if that is what you mean.

Q. Turn to page two, and in the second full paragraph that begins with the words, "The price of paper", the seventh line down, the sentence there that begins: "The Koesslers now have the three runs at Dallas, Houston and San Antonio, and Walter said they needed a lot more work than that to justify the southwest plant." Did you then have the three runs, Dallas, Houston and San Antonio?

2324 A. Yes.

Q. Did you tell that to Walker?

A. He knew it. I don't recall I told him, he knew it.

Q. And do you recall whether you told him that you needed a lot more work than that to justify the southwest plant?

A. No.

Q. You don't recall it?

A. No. That isn't the way things work, you go down and take your chances and—

Q. Read the last sentence in that paragraph—

The COURT: Wait a minute. Take your chances alone or with your skill?

The WITNESS: With your money, your hope to make a paying proposition out of it. Nobody is going to insure they are going to give you their business or you are going to make money. You put your money in and take a chance like anybody else going in business.

The COURT: I go back to my premise, you think you have something to sell?

The WITNESS: Indeed.

The COURT: I don't want to put answers in your
2325 mouth, but isn't that what you always persisted, that you had something to sell?

The WITNESS: Indeed we thought we would sell those newspapers down there if we located the plant. In 1954 the only business we actually had that was in Texas or in the southwest area were the jobs we were then printing up in Dunkirk or in

Buffalo. They were printed up here, these people were paying the freight on them down in Texas.

The COURT: All right.

By Mr. BERNSTEIN:

Q. Now, I invite—

The COURT: Mr. Bernstein, I must make it quite clear that you must persuade me there was no unique ability here, that this is another plant, a scheming plant with money. You have to persuade me and I only alert you, that this man had something to sell. You say, "Of course he did, but he wanted to gather it all." That is a side issue with me—
2326 not a side issue at all, it is an important consideration, but you see, I still believe in Fulton and the steamboat. I think Fulton was entitled—I don't think he got many rewards, but—do you see what I am driving at? Maybe I am a boy in the woods myself.

Mr. BERNSTEIN: I appreciate the Court's giving us the benefit of his views at this time. All I can say is that I hope to persuade the Court.

The COURT: I don't care about money, basically, but I wish I could think of something original, I would take pride in it, whether it was a better price, a better anything, or running a better court. Go ahead.

By Mr. BERNSTEIN:

Q. P-44, Mr. Koessler, page two, in the second full paragraph, next to the last sentence, it reads: "Other runs
2327 which Walter said he ought to have in order to come out were Oklahoma City, which also has a newly rebuilt press, Tulsa, Little Rock, Memphis, New Orleans, and Houston. He professed not to be interested in smaller runs. We have never found the Koessler's competitive with King on the smaller runs, and if they cling to their ideas as to makeready costs, et cetera, they never would come up with a good price on the Pappert run. They really prefer not to handle this smaller stuff." Mr. Koessler, do you recall whether you said to Mr. Walker about this time that you did have the Oklahoma City—that you needed the Oklahoma City run, Tulsa, Little Rock, Memphis, New Orleans and Houston in order to come out in the Lufkin plant?

A. No. I told him—that is, I could have told him, I don't recall all this conversation, I could have told him we were look-

ing, these were possible runs for us to get and runs we sure were going to try to get, runs that should belong down in that plant in Lufkin. Three of them—there are six mentioned here—could we talk some more about the runs mentioned here?

Q. Do you recall whether you said to him that you were not interested in the smaller runs?

A. Ordinarily, we were not.

Q. Is your answer that you were not ordinarily
2328 interested?

A. We are not interested in a job in which we don't have a makeready.

Q. You are using the present tense, and I am talking about March 30, 1954. It was the same then? At that time you were not generally interested in the smaller runs, is that correct?

A. Runs that some of these syndicates had because we couldn't compete with them, they had the makeready, the features, we didn't.

Q. And were you discussing that with Mr. Walker?

A. I could have been.

Q. For what purpose?

A. Well, if he was curious to know what our plans were down in Lufkin, I was telling him that these are jobs that somewhere along the line we have got to get or should get to make the thing come out right. Incidentally, one of them, Little Rock, is one of the ones we didn't get, and the reason we didn't is your injunction, Mr. Bernstein, keeps the job up in International Color Printing Company in Wilkes-Barre.

Q. Who is printing that?

A. International—King Features holds the account.

Q. International does the printing and gets the revenue from the printing?

A. Yes.

2329 Q. Greater Buffalo Press gets the revenue from International?

A. But the newspaper pays the freight from Wilkes-Barre to Little Rock.

Q. Insofar as J. Walter Koessler is concerned, he was not losing any money on that transaction?

A. No, but you were telling the Judge what you are interested in was the public, that the newspapers were the ones going to suffer. Here is a case where the newspaper is suffering on account of your injunction.

Q. That is correct. I don't want to debate the point with you, I will do that in the hall later. But the fact of the matter is that on March——

The COURT: Wait a minute. Let me ask you; no one is going broke, I trust?

The WITNESS: We are not complaining a bit.

The COURT: Nobody else is, right?

The WITNESS: No.

The COURT: You know, in the nature of things——

The WITNESS: Except Mr. Bernstein.

The COURT: —sometimes the Court has to grant injunctions largely because of an alleged abuse, and the Court has to
2330 evaluate that. When it goes on for years, you get disturbed about it, this is going on for years. I put a crimp in you in Sylacauga, until I found, about six months later, that I felt somebody was taking advantage of that crimp, and we had a hearing, do you remember?

The WITNESS: That is right.

The COURT: I tried to relieve that. I will not use my injunctive powers to benefit somebody else. I cannot say I was right even then. In other words, these injunctive things, Mr. Koesler, and Mr. Bernstein knows this, are stop-gaps while we try to figure out what is right. We are short-handed. We come on, we do the best we can. People think why is it so long? We are short-handed, which I cannot control nor thee. Do you see?

The WITNESS: Judge, we are not complaining at all.

The COURT: You say that this is a bum situation in your view. It may be, I don't know, but you do the best you can.

The WITNESS: Indeed. No fault of yours.

2331 The COURT: Do you see?

The WITNESS: King Features went to the Justice Department and asked them for relief, and they have refused to give it.

The COURT: You do the best you can. You say things that alert me. After all I am the fellow that has to decide these things, temporary injunctions and everything else. I guess I have a touchy point. One a year ago the Court did something and, look, somebody didn't like it. Basically, at least in my court, I try to do the best I can. I mean what I am driving at, you can't do it all.

The WITNESS: Indeed you can't.

Mr. BERNSTEIN: And, if the Court please, there have been

applications to move runs, take them out of the injunction that the Court granted, on the consent of the Department of Justice, and the Department of Justice is willing to entertain
 2332 any applications for any individual run presented to the Court, join with it until we can come to grips with the problem.

The COURT: The only thing the Court, being a one man Court is sensitive about, is any question of whether it is sleeping, resting on its laurels. I am sensitive about that. I am sure it is not quite true. Go ahead.

The WITNESS: We are not hurt at all. Mr. Bernstein is talking about the position of the newspapers and this is something that is hurting them and not us. Nobody is complaining, actually.

The COURT: I think you have a right to complain. That is the end of it. But this Court does the best it can.

The WITNESS: Indeed it does.

By Mr. BERNSTEIN:

Q. P-46 in evidence, Mr. Koessler, is a memorandum from Mr. Walker to Eli Minton in Dallas, dated May 17, 1954, and in that, in the first four paragraphs, if you will read that to yourself, please?

2333 A. The first four paragraphs?

Q. Yes.

A. Yes. Go ahead.

Q. Mr. Walker talks about a party at the Stork Club in which you were telling everybody that you were going ahead with the southwest operation. Do you recall what he was referring to?

A. No.

Q. And Mr. Walker talks about—he said some weeks ago he told you about a \$12.00 discount on paper.

A. I don't remember that. There was no such thing. I know there wasn't any such thing as that.

Q. On June 3, 1954, this is less than a month later, you signed a commitment to purchase 15,000 tons for the Lufkin plant?

A. Yes.

Q. Mr. Walker is saying, on May 17th, to Mr. Minton, his representative in Dallas, that he had spoken with you some weeks ago, you were talking with him about your purchase of paper for the Lufkin mill. What I am trying to find out, do you recall having such a conversation or conversations of that nature with Mr. Walker?

A. No.

Q. You don't recall?

2334 A. No. I don't recall any \$12.00 a ton discount on paper either.

Q. All right. Do you recall talking to Mr. Walker about Lufkin and your plan to open that plant in and around May of 1954, and this is before you signed a contract to purchase the paper?

A. Mr. Walker did talk to me about it, yes.

Mr. BERNSTEIN: Would you read the last answer back? (Thereupon the last answer was read by reporter.)

By Mr. BERNSTEIN:

Q. I show you P-32 in evidence, Mr. Koessler, that is your letter to Mr. Anderson, dated December 5, 1956, and this is after you purchased the Buffalo Color Press. You say, "Dear Earl: We have a man, Fred Jerauld by name, who is working out of Lufkin on the larger southwest accounts, and Albuquerque, New Mexico is one of these." Was Jerauld an employee of the Greater Buffalo Press, Inc.?

A. Yes.

The COURT: Mr. Bernstein, I didn't quite get your resume. We have heard a lot of proof here. Do you think there is an area of a consent decree that could possibly be worked

2335 out between yourself, Mr. Koessler, NEA, Mr. Raichle,

Mr. Moore and your colleague, that might sanctify, in the light of things now; after all, we are presented with things now, do you think there could be any value at all, rather than going on forevermore, do you think there is any reason or value to you trying to resolve anything in this present field of journalism that you can agree upon? I never asked you before. The ideal time is in chambers, where there is a little give, a little take. There is something here that might not—your concern, Mr. Bernstein, is that the public doesn't pay more for its product on the street?

Mr. BERNSTEIN: And the freedom of the newspaper to purchase where they will without being victimized by any syndicate tie-ins and with syndicates free to get printing done wherever they wish without anybody monopolizing the printing

2336 facilities. Those three areas are the Government's concern.

The COURT: If you were to agree to that, forgive the past, whatever you think the past was; Koessler now is a giant in the

printing game, he is running a top show. You don't want him to—

Mr. BERNSTEIN: I want a fair fight.

The COURT: Wait a minute, I know that. You want to define the future, right?

Mr. BERNSTEIN: Yes, sir.

The COURT: Don't you think there might be some merit in talking about this?

Mr. BERNSTEIN: I think there are merits. I think we will make every effort to do that. As a matter of fact, I mentioned this to Mr. Raichle yesterday.

The COURT: You didn't mention it to me.

Mr. BERNSTEIN: I mentioned it to Mr. Raichle. I took the initiative yesterday to do it. I really believe, your Honor,
2337 we will not be able to come to grips with this, none of the diverse views would be able to reach a compromise, maintaining their position, until we have the facts in the record.

The COURT: You lean toward the fact that you think there might be an area of settlement in this case?

Mr. BERNSTEIN: I do, your Honor. I do it not because the Court suggested it, although I deeply respect the Court's suggestion, but I do it because I feel it is my duty to make every effort to settle any part of a litigation if the settlement that can come out will be a fair one to all parties concerned, and it can't be fair, from the Government's standpoint or the public's unless we have the opportunity to persuade Mr. Koessler and his counsel, and NEA and their counsel, that this apparently has merit. If we are in the position where they say that didn't happen—

The COURT: What do you want; do you want a strip
2338 of hide or do you want conformance?

Mr. BERNSTEIN: I want fairness.

The COURT: Do you want a strip of hide or do you want conformance? I am talking to you, Mr. Bernstein. Do you want a strip of hide—

Mr. BERNSTEIN: I want nobody's hide.

The COURT: Or do you want conformance to what you think is reasonable?

Mr. BERNSTEIN: Yes, conformance to what the consensus of reasonableness would be among the counsel for the parties.

I will make every effort to do that when the evidence is in the record.

The COURT: Proceed.

By Mr. BERNSTEIN:

Q. P-32, Mr. Koessler, you say to Mr. Anderson that one of your representatives who is working out of Lufkin on the larger southwest accounts. You tell him: "We have to get these larger papers on our own to keep the general overall price in line so we can come out okay. Kenneth says he talked to you on this and we will have a meeting to outline the accounts we wish to keep as our private preserve." What 2339 did you mean by that?

A. I meant we didn't think we could—Scripps-Howard has a paper—we are talking about Albuquerque?

Q. Yes.

A. There is two papers in Albuquerque. One is the Albuquerque Journal and there is another paper in Albuquerque. I don't know the name of it, it is owned by Scripps-Howard. We told them we were going to solicit the business of the Albuquerque Journal but, as far as the Scripps-Howard paper is concerned, they were to have a comic section, we realized that is something outside of our preserve, we could not get it, they would not give it to us. If they were going to give it to anybody they would give it to their relations, and their relations were NEA.

Q. Is that what you meant when you said: "The Scripps paper, of course, is yours if you can sell them a comic section."?

A. That is right.

Q. You say: "It is my understanding that the Albuquerque Journal is not a Scripps paper." When you say: "We wish to keep as our private preserve.", you were talking that a paper like the Albuquerque Journal is one that you would like?

A. Any private newspaper that wasn't owned by 2340 Hearst or Scripps-Howard that we knew we didn't stand a chance of getting, we were not going to try.

Q. You were going to permit NEA to get it, if it could?

A. Not permit it.

Q. They would try?

A. Common sense would dictate that Scripps-Howard would give it to NEA if NEA solicited it.

Q. If NEA got that account and had it printed at the

Greater Buffalo Press, NEA would get a commission on it from the Greater Buffalo Press?

A. They would indeed.

Q. They would indeed, is that correct?

A. Yes. At this time can we have a discussion about——

Q. I would rather not.

A. I am sorry.

Q. I'll be through. I want to get done by four-thirty, so we can meet the deadline, and I will be through. On D-1 in evidence that Mr. Raichle asked you about on your direct examination, I invite your attention to the figures on the top portion which refer to the circulation of five newspapers; the Dallas News, the Houston Chronicle, the Kansas City Star, the San Antonio Express and the St. Louis Globe-Democrat; and I ask you if you recall in or about January 10, 1958, what type of sections the Dallas News was printing? Was it a
2341 twelve-page standard?

A. I couldn't tell you.

Q. I show you a piece of paper and ask you if you can—if that refreshes your recollection?

A. Yes.

Q. Was it a twelve-page standard?

A. Yes.

Q. And the Houston Chronicle, can you tell us whether or not that was a ten-page standard?

A. That is what it says there, those are our records, I think.

Q. The Kansas City Star, was that a ten-page standard?

A. Yes, that particular week. This is a certain week.

Q. January 10, 1958, is that correct?

A. Yes.

Q. Do I have in my hand what is known to you as a run sheet?

A. I think you could call it that.

Q. That lists the type of sections that the various newspapers, being printed by Greater Buffalo, was printing, is that correct?

A. For that date.

Q. For that date, yes. Now, as of January 10, 1958, was the San Antonio Express then printing a ten-page standard?

2342 A. Yes.

Q. Was the St. Louis Globe-Democrat printing a twelve-page standard?

A. Yes.

Q. And as of January 10, 1958, if you were trying to compute the runs, the production, in terms of four-page sections for the Dallas News, which was then printing a twelve-page standard, would you multiply the circulation 250,000 by 3?

A. This refers just to circulation, it doesn't refer to the number of pages.

Q. Right. If you are trying to find out the type of production, that is, the quantity of production, in terms of four-page sections, would you multiply the circulation by three if it was printing a twelve-page standard?

A. As of that date.

Q. Yes. That is the method that you would use, is that correct?

A. If you wanted to determine the volume of sections turned out that week, that is the way you would do it. The purpose of this statement was merely to give the relative amount of printing that the Greater Buffalo Press owned in the Lufkin plant.

Q. I understand.

2343 The COURT: Let me ask you something. I was sitting here thinking. Do you remember when I removed the injunction on the Sylacauga plant, basically because I thought flatly somebody was taking what I thought an unconscionable advantage, this fellow Hornady, putting out flier copies of my edict. Do you disagree with that?

Mr. BERNSTEIN: I did, yes, your Honor. I did because—

Th COURT: Isn't it true because—well, maybe you think he is entitled to put out copies of my order to every press in the country because I enjoined his competitor. Do you think that was proper?

Mr. BERNSTEIN: At the time—

The COURT: Maybe Walter Koessler made inopportune moves in his life and pressed hard, but didn't you think he pressed hard, that fellow down there, Hornady? I ask you frankly.

Mr. BERNSTEIN: I frankly, your Honor—

2344 The COURT: Don't you think he pressed hard? He thought he had a windfall.

Mr. BERNSTEIN: Frankly, your Honor, honestly, I'm not familiar with the facts as of that time. I was not—

The COURT: You are familiar with the fact I relieved my limitation. Did you agree with it?

Mr. BERNSTEIN: I did not. We were considering an appeal, and it was based upon the agreement of the Government not to appeal from your Honor's decision that counsel and the Government entered into a modification of the order.

The COURT: In this jungle somebody who has an advantage in the newspaper field suddenly gets hit with a whack, and what does the other part of the jungle do, run with it. I mean that isn't normal. Do you spread all over the creative image of journalism that Walter Koessler is out of business in this area,

let me hunger for you? Wait a minute, let's be fair.

2345 Am I unfair to you?

Mr. BERNSTEIN: I honestly believe, your Honor, that the past is prologue.

The COURT: You say the past is prologue. I am living today. I am wondering, you know, things happen, this war in Israel and the Arabs, we get an image of it today, but I will bet you in a year we will have a different image and somebody is going to be right. Somebody wants the Israelis to give up six miles that they have grabbed, the Arabs do, and the Israelis say negative. Look, it's not much different in business, seriously. You may say you get a different connotation, that is war. Look, this stuff is war, as I see it. You got something to sell, you got a printing plant that can go, you got top fellows in the ranks, like top lawyers, some top lawyers do it all, others go along,

it's the same thing. Now, I know you are interested in
2346 the public. You have to think about this thing. Someday there is going to be a judgment made on Israel and Arabia, and you can bet your last hat that I don't think Israel is going to hold it all or we will have trouble. Now, that is what I was talking about. These printers, this man prints a better paper, you say that. Somebody writes a better article, his stuff is more interesting than mine. Bishop Sheen's stuff is better than Bishop Duffy's, let's say, and somebody gets prominent, that is the way the world bounces. You see, Mr. Bernstein, if Mr. Koessler had no skill, if he was the same as everyone else and he just went out to murder everybody through phony deals, I would be your man. You got to come over that hill with me,

that he did not start out with \$1,000 with his brother
2347 and Charlie Frieberg and by dint of effort haul Hearst off his horse. Do you see? That is a long road on a high hill.

By Mr. BERNSTEIN:

Q. I show you P-25 in evidence, Mr. Koessler. P-25 is a letter to you from Mr. Nicht, dated August 17, 1955. He says on the last page, the last paragraph of that page: "I had what I think——"

The COURT: Excuse me. I wouldn't be the first to tell you that because of his skill, opportunity sought him out, but you've got to have an agreement. He may have had to make tribute here on his road, but tribute is not an agreement. In other words, what I am trying to say is this. Somebody may have set upon him and made demands, he may have acceded that is not a conspiracy, you know that?

Mr. BERNSTEIN: Yes, your Honor. I am going into this phase, as far as Eastern Color, Mr. Koessler's printing competitor.

2348 The COURT: All right.

Mr. BERNSTEIN: Eastern Color has been charged as being a co-conspirator with Greater Buffalo in this case. We are going into that area now.

The COURT: You may be discouraged by my remarks. I don't want to discourage you.

Mr. BERNSTEIN: I respect the Court too much to——

The COURT: I am telling you that I am viewing things with a hard eye.

Mr. BERNSTEIN: I accept the burden that I have. I will proceed.

By Mr. BERNSTEIN:

Q. I invite your attention to the last paragraph on the first page of P-25, in which Mr. Nicht says to you: "I had what I think is another worthwhile talk regarding Eastern." Eastern was your competitor at that time, is that correct?

A. My—our competitor, sure.

Q. Mr. Nicht said: "As things look now, maybe I'll be able to work things out." As of August 17, 1955—strike that out. "It may involve Portland, Maine, and New Bedford and in the process we might get Greensboro. I'm not sure, but
2349 I'm hopeful. In this connection, what are your thoughts about the Boston Post? If all of this can be worked out, our friends would be able to obtain increases on their present work which they are sorely in need of." Was he talking about Eastern when he said "our friends"?

A. Well——

Q. Just yes or no, was he talking about Eastern?

A. I don't know.

The COURT: Wait a minute, now. If you asked me if I was talking about friends under similar circumstances, I think I would hesitate. Do you want to hesitate?

The WITNESS: Yes.

Mr. BERNSTEIN: I will withdraw the question.

By Mr. BERNSTEIN:

Q. "Our friends would be able to obtain increases on their present work which they are sorely in need of." Look at your response to Mr. Nicht, dated August 22, 1955, which is P-26 in evidence. You say in the fourth paragraph: "On the Eastern matter your proposed plan is okay with me if it is agreeable with Joe Gorman." Was it agreeable with Joe Gorman?

A. No.

2350 Q. Did you discuss it with Mr. Gorman?

A. Yes.

Q. What did you tell him?

A. Well, let's go over what the proposal was first. Let's get that straightened out. In other words, Nicht was going to take some of the business that he had in Wilkes-Barre and give it to Eastern Color. Also, at the same time, he was suggesting to us, Greater Buffalo, that we give up the printing of the Boston Post, which was our own account, which we were not going to give up. It was a lot of nonsense.

Q. Your letter to him, to Mr. Nicht, was: "On the Eastern matter your proposed plan is okay with me if it is agreeable with Joe Gorman."?

A. It wasn't agreeable with Gorman.

Q. You told Nicht it was okay with you, didn't you?

A. That is always what you had to tell Nicht.

Q. You were trying to lead him on?

A. No. Anyway, he didn't give it to Eastern.

Q. Right.

A. We didn't give the Boston Post to Eastern either.

The COURT: Let me ask you; may I hope that I will hear from Mr. Gorman some time?

The WITNESS: Yes.

Mr. RAICHLE: He is our next witness, your Honor.

2351 The COURT: Let's not beat that into the ground. I shall listen to him.

Mr. BERNSTEIN: I will be through in—

The COURT: Are you through with this witness?

Mr. BERNSTEIN: I beg your pardon, your Honor, I am sorry.

The COURT: When are you going to be through?

Mr. BERNSTEIN: I have four more documents with this witness and I will be through with him.

The COURT: Finish him up. I suppose there will be some redirect.

Mr. RAICHLE: The redirect will be less than five minutes.

Mr. STEVENS: A very short cross-examination by NEA also, your Honor.

The COURT: I expected none from you. I haven't heard your name, except casually.

By Mr. BERNSTEIN:

Q. P-67 for identification is a memorandum from Mr. Nicht to himself, dated August 4, 1955, about the time—two weeks before his letter to you dated August 17th concerning the Eastern matter. He says—look at the first paragraph, do you
2352 recall having a luncheon session with him at which Mr. Lalor was present?

A. No.

Q. And do you recall whether or not he told you about his recent visit with Bill Pape and Ham Moore?

A. No.

Q. Who are Bill Pape and Ham Moore?

A. Bill Pape is the owner of Eastern Color, part of the family that owned Eastern Color Printing Company. Ham Moore was a salesman for them.

Mr. BERNSTEIN: I offer P-67 in evidence on the same basis.

Mr. RAICHLE: Same objection.

Mr. STEVENS: Same objection.

The COURT: Let me see it.

Mr. RAICHLE: It isn't a letter. It is one of Nicht's memoranda.

Mr. FELDMAN: Yes.

The COURT: Same ruling.

By Mr. BERNSTEIN:

Q. P-68 for identification, another memorandum of Mr. Nicht's to himself, dated August 17, 1955, and I ask you to look at the first four paragraphs, read them to yourself.

A. This is something that doesn't involve us at all.

2353 Q. My question is, do you recall whether or not about that time you had a conversation with Mr. Nicht in

which he told you that he had met with Ham Moore of Eastern Color Printing Company, and that they liked the idea of King giving them Portland and New Bedford and Eastern to turn over Greensboro, North Carolina to King? Do you recall having such a conversation, yes or no?

A. No. They never did.

Mr. BERNSTEIN: I offer P-68 in evidence.

Mr. RAICHLE: Same objection.

Mr. STEVENS: Same objection.

The COURT: It's a Nicht memorandum?

Mr. BERNSTEIN: Another memorandum from Mr. Nicht to himself.

The COURT: The same ruling.

Mr. BERNSTEIN: P-66 for identification, your Honor, is another category of memorandum. This is a memorandum from Mr. Nicht to Mr. Ward Greene, dated November 4, 1955, concerning the Eastern situation.

The COURT: Who is Greene?

Mr. BERNSTEIN: He is Mr. Nicht's superior in the Hearst organization.

2354 The COURT: Do you think that is a business entry?

Mr. BERNSTEIN: This is a different category. This is a formal report of Mr. Nicht to Mr. Greene. I will offer it at this time and request your Honor to reserve ruling so I can argue it in extenso later on.

The COURT: Yes.

Mr. BERNSTEIN: Would you mark document 252 for identification?

(Thereupon memorandum referred to was marked Plaintiff's exhibit P-101 for identification.)

Mr. BERNSTEIN: P-101, your Honor, is another memorandum from Mr. Nicht to himself. I offer it in evidence with the—

The COURT: Same ruling.

Mr. BERNSTEIN: The Government has no further questions of this witness.

The COURT: Now, you may step down. There will be some redirect in the morning. Now, I am trying to get this
2355 case in grips. Now, Mr. Bernstein, what are you contemplating, tomorrow is Friday?

Mr. BERNSTEIN: I would hope, if your Honor finds it possible, to start earlier tomorrow. I would hope we could be

through with the evidence tomorrow. The witnesses remaining are redirect on Mr. Koessler; and I understand Mr. Raichle is going to call Mr. Gorman, there will be cross-examination of Mr. Gorman—I think there will be cross-examination of Mr. Koessler by NEA to some degree—then Mr. Gorman, then the next witness is Mr. Anderson of NEA. I believe that if the Court's schedule permits, if the Court is willing, if we could start early in the morning, I am confident we could be through tomorrow and then I think we would be in a position to discuss settlement of this case with counsel, we would at least
 2356 discuss it, we will initiate discussions. I would ask the Court to schedule a half day for getting the evidence of the tie-ins against NEA at the earliest possible time, as soon as possible, for a half day.

The COURT: Driscoll, who is he? Have I his deposition?

Mr. BERNSTEIN: No.

The COURT: Where is he?

Mr. BERNSTEIN: He is available, I am sure.

The COURT: He is Nicht's satellite, isn't he?

Mr. BERNSTEIN: No, your Honor. Mr. Rogers is Mr. Nicht's successor.

The COURT: Look, you have an exhibit here, P-73 for identification. Do you know the letter I am talking about?

Mr. BERNSTEIN: Isn't that the letter in which he says how much he is paying him?

The COURT: Look, Nicht is dead, he is gone. His satellite, Driscoll, who apparently he sent on forays, has news to tell you. Do you choose not to call him?

Mr. BERNSTEIN: No, we will call him.

Mr. BERNSTEIN: No, we will call him.

2357 The COURT: I point out that I consider the whole story of Nicht and Koessler, his machinations and under the cover operations as subject to interpretation.

Mr. BERNSTEIN: No question about it.

The COURT: This fellow Driscoll, he was Nicht's boy. I mean I assume he was. Well, all right. Everyone calls the witnesses he wishes to call. Only the Court questions why others aren't called, but the Court also can make inferences because they are not called. Am I too cruel?

Mr. BERNSTEIN: No, sir. I will run that risk. That is the risk I run in making the decision as to how long I want to prolong the record and whether we have sufficient in the record

to be able to take the bits and pieces and put it together for your Honor at another time.

The COURT: I would like to hear certain people; Driscoll—Hornady—came up here? That is the Southern Colonel
2358 sort? Maybe I am characterizing him unduly. He was up here?

Mr. BERNSTEIN: Did he testify orally?

Mr. MOORE: By deposition only.

Mr. BERNSTEIN: What live witness did you—

Mr. FELDMAN: Smith, Robert Smith, Southern Color Print.

The COURT: Yes, a very impressive man. Now, what time do you want to start in the morning?

Mr. BERNSTEIN: I hope I am not imposing on the Court by suggesting nine o'clock or nine-thirty.

The COURT: It just happens I am here every morning at nine, otherwise you would be imposing on me, and I am not running for public office either. We will start at nine. Is that all right, gentlemen?

Mr. BERNSTEIN: Yes.

Mr. RAICHLE: Yes.

Mr. STEVENS: Yes.

The COURT: Good night.

(Thereupon the Court was in recess at 4:00 P.M.)

2359 (Proceedings resumed, pursuant to recess, commencing at 9:00 A.M.)

Mr. BERNSTEIN: If your Honor please, before we begin the redirect examination I would like to correct the numbering of an exhibit in yesterday's record. P-97 for identification is a document dated February 26, 1958, and headed "Notes Regarding Greater Buffalo Press." Thereafter, a document dated June 19, 1957, from Mr. Nicht to Mr. J. D. Gortatowsky was offered and received in evidence and a statement was made that it was being submitted at the request of counsel for the defendant, Greater Buffalo Press, to be included with some exhibits they had previously asked to be included to complete the story. That document is now marked P-97 in evidence, and since it is a duplication of numbering, I request that the number
2360 97 in evidence on the June 19, 1957 letter be deleted and it be renumbered and received in evidence as a new number.

(Thereupon document referred to was marked Plaintiff's Exhibit P-102 and received in evidence.)

JOHN WALTER KOESSLER, having been previously duly sworn, resumed and testified further as follows:

Mr. STEVENS: Shall I proceed, your Honor?

The COURT: Yes, please.

CROSS-EXAMINATION

By Mr. STEVENS:

Q. Mr. Koessler, I have just a few questions. When Fred Ferguson, who was president of NEA back in the forties and early fifties, heard the report that your brother Kenneth and Leon Herman made in '47 and '48, after their trip in the south, he didn't think much of NEA's putting any money into a jointly owned color comic printing plant in the south?

A. That is what he said.

Q. As a matter of fact, do you recall that his comment
2361 was that NEA could make more money investing in Government bonds?

A. I am sure he said something like that.

Q. And however mistaken he may have been, he stuck to that position, didn't he?

A. Yes.

Q. Now, in 1955, as you have told us, Buffalo Color Press was in bad shape, wasn't it?

A. Mechanically, yes.

Q. As a matter of fact, it could fairly be described as a dying enterprise, is that so?

A. The machinery was all fifty years old or more, it wasn't any good to make money with.

Q. It was utterly useless to compete in the modern market?

A. Right.

Q. Actually, the plant itself was inadequate, wasn't it?

A. Yes, sir.

Q. Of course, you testified that Buffalo Color Press had been calling on Greater Buffalo Press for a substantial period of time to help them in repairs and keep the plant going?

A. That is correct.

Q. Of course, at that time, in 1955, Greater Buffalo Press,
prior to the purchase of Buffalo Color Press,
2362 was also printing substantial color comic supplement runs for NEA?

A. Yes, sir.

Q. Greater Buffalo never made any agreement to refrain from soliciting color comic supplement customers or to maintain or stabilize printing with NEA, did it?

A. No.

Q. Or with Buffalo Color Press?

A. No.

Q. Nobody at NEA or Buffalo Color Press asked for any such agreement?

A. No.

Q. Nobody at Greater Buffalo asked any such agreement?

A. No.

Q. You were shown an exhibit marked P-32, Mr. Koessler. It is a letter from you to Earl Anderson regarding your man, Fred Jerauld, dated December 5, 1956?

A. Yes.

Q. That letter is really nothing more than Greater Buffalo telling NEA that Greater Buffalo was going to go after the Albuquerque Journal business as a house account, isn't that right?

A. That is right.

Q. Of course, nothing in P-32 and nothing in any agreement you ever made with NEA barred NEA from getting 2363 printing from anybody else it could and try to sell that run, did it?

A. No. The Albuquerque Journal was never secured, by the way. That is still an Acme Color account.

Q. As a matter of fact, the Albuquerque Journal didn't become a Greater Buffalo run, did it?

A. No.

Q. It went to the Acme Color Printing Company out in San Bernadino, California?

A. It was with them originally. We were never able to get it away from them.

Q. Now, another document in evidence, P-33, is a sales report from NEA's salesman, R. C. Whitehead, regarding the Jacksonville, Florida Times-Union, this report being dated March 29, 1957. Did Greater Buffalo secure that run?

A. No, but we tried to.

Q. And when you tried to get it, when you told NEA that you were going to try to get it, again you were merely telling them that Greater Buffalo was exercising its right to try to get that account as a house account, isn't that correct?

A. Yes, that is right.

Q. Again, nothing which you said to NEA and no agreement which you ever had with NEA would have barred NEA to try to get that printing for the Jacksonville Times-Union any place else?

A. No.

Q. Who got that run?

A. King Features.

Q. In this report Mr. Whitehead, you will see, makes some comment about amounts which Greater Buffalo will pay. Are you familiar with his statements there?

A. I know nothing about this. That is his own judgment.

Q. As a matter of fact, Greater Buffalo never paid NEA on a run which Greater Buffalo took from it?

A. No.

Q. You had no agreement to pay them?

A. No.

Q. Mr. Whitehead's comments then in P-33 about what would have been paid if Greater Buffalo got the Jacksonville Times-Union run are totally wrong?

A. Yes. They are just his judgment as to what should be, what shouldn't be.

Q. On the general subject of payments to NEA by Greater Buffalo; Greater Buffalo has never paid NEA any continuing sum on runs transferred to Greater Buffalo from Buffalo Color Press after NEA lost the account, has it?

A. No.

2365 Q. You remember that when we were here in January—I believe it was 1966—there was extensive argument about money being paid by Greater Buffalo to NEA after King took a run, or to King after NEA took a run from it; Greater Buffalo never made any such payments, did it?

A. No.

Q. Certainly there never was any agreement or intention for you to pay it, was there?

A. Mr. Bernstein's contention, as I remember it, was that the contract we signed committed us to pay you—if King got a job we had to pay NEA. I don't know if it was vice versa, if NEA got a job we had to pay King. The contract wasn't intended to mean that. It never did mean it. We didn't recognize it as such and neither did NEA.

Q. Specifically looking at Appendix B to Plaintiff's Exhibit P-27, you recognize that as the schedule of named customers

which NEA turned over to—which NEA had in Buffalo Color Press and which were transferred to Greater Buffalo at the time of the sale of Buffalo Color Press?

A. Yes, sir.

Q. When NEA lost a customer listed on Appendix B, you never paid NEA any further commission, did you?

2366 A. No.

Q. To be specific, because the instance has been covered in the testimony, when NEA lost the Rome, Georgia News Tribune in 1956, your payments to NEA stopped, did they not?

A. Yes.

Q. And that has been true in every other instance where NEA has lost an account on this list?

A. That is right.

Q. We have had a lot of talk about Mr. Nicht, and my recollection is that you earlier described him as a man who never took any interest in seeing the other fellow's side; are my notes accurate?

A. Yes.

Q. And was Senator Long's statement, which you said applied to Mr. Nicht and his attitude, "Holler murder and never give an inch"?

A. That summed up his approach to business.

Q. Mr. Nicht, being a tough, rough, almost merciless competitor, was most vindictive toward NEA, wasn't he?

A. Yes.

Q. As a matter of fact, total elimination of NEA from the color comic supplement field was almost his cardinal principle of competition, wasn't it?

A. Yes. He sent out several bulletins to the salesmen
2367 that that should be their first business.

Q. You used the term, I believe yesterday or the day before, that he regarded NEA as King Features arch enemy?

A. Yes, he said that.

Q. He also used a lot of other strong terms, such as kill and murder NEA, did he not?

A. I don't know. I don't remember those, but it could have been.

Q. At least, they were equally strong?

A. Yes.

Q. To your knowledge, did he ever relax his attitude toward NEA?

A. No.

Q. At any time?

A. No.

Q. Is that true both before and after this Beverly meeting we have heard so much about?

A. Yes. I don't recall that he ever relaxed any competition against NEA at any time.

Q. As a matter of fact, when you spoke to Mr. Nicht about Rome, Georgia, as reported in P-41, and told him that NEA was complaining about his illegal combination of features and printing, he told you he did it, he was going to keep it up?

2368 A. That is right, that is what he put in the telegram.

Q. Insofar as NEA was concerned, he was relentless and implacable in his attitude of eliminating it totally from the color comic supplement field, wasn't he?

A. That is right.

The Court: What was the history of NEA? Had it been in that business a long time or was it trying to come in well after Nicht was established? What was the history?

Mr. STEVENS: King Features syndicate, was, I am sure, established substantially before. It had at one time, as you will recall the earlier proof and certain representations counsel have made, 100% of this color comic supplement field. NEA entered the field with, I believe, a six-page readyprint some time in the mid-thirties and it was coming along and increasing very slightly in the market. But, as the proof shows, the attitude towards it as a poacher, an interloper, was the one

2369 Nicht repeatedly and continuously held.

By Mr. STEVENS:

Q. You said both in direct examination by Mr. Raichle and yesterday, I believe, in response to questions by Mr. Bernstein, that Greater Buffalo wanted to keep its plans about Lufkin to itself, not tell NEA and King?

A. That is right.

Q. And the exhibits which were shown you late yesterday, I believe they were Exhibits 44 and 46, being Herbert Walker's letters to Eli Minton, are really nothing more than Mr. Walker's efforts to piece together bits of information so that he could know as much as possible about the field?

A. That is about it, yes.

Q. Certainly you were not giving him any real help in finding out about it?

A. No.

Q. Now, the attitude which you had about keeping the development of Lufkin to yourself was equally true regarding NEA and your acquisition of International Color Printing in '55, wasn't it?

A. Yes, sir.

Q. And you know of no reason to doubt Mr. Walker's statement in P-51, which was dated August 2, 1955, that he was surprised when he learned of that acquisition?

2370 A. I think he was. We hadn't told him. I don't know how he would find out until it was public knowledge.

Q. Yesterday you were also interrogated about Plaintiff's Exhibit P-43 and 42, these were two letters which refer to Sioux City, Iowa, Sioux City Falls, South Dakota, and Fargo, North Dakota. At the end of your testimony on that subject, you made the comment, I believe, that these really show the competition between NEA and King, am I correct about it?

A. Yes, that is right.

Q. As a matter of fact, at that time, in 1960, NEA and King were competing tooth and nail in the color comic supplement field, weren't they?

A. Yes.

Q. In truth, these letters are evidence of the fact that when King, for example, undertook to get the run in Sioux City, Iowa, that NEA fought back as best it could to hold the business?

A. Yes.

Q. The same was true as to the Fargo run?

A. Yes, sir.

Q. In the letter which you wrote to Mr. Anderson, dated March 15, 1960, P-43, you say: "Fargo and Sioux Falls go together, as I understand it, and the combined circulation is in excess of 100,000." By saying they go together, 2371 you were referring to the fact, were you not, that those two runs were a readyprint?

A. That is right.

Q. And by "readyprint", you know better than I, we mean a run in which there was a single makeready charge for the total run?

A. That is right.

Q. And that all you had to do to adapt the Sioux Falls comic color supplement from the Fargo was to change the masthead or banner?

A. The name of the newspaper.

Q. The name of the newspaper. When you said in this letter, dated March 15, 1960, "This job should present no problems competitively", you were referring, were you not, to the fact that by having a readyprint run in excess of 100,000 the rate at Greater Buffalo Press was less per thousand than the rate at International?

A. Yes.

Q. In other words——

A. Or equal.

Q. Or equal. In other words, am I correct, that the flat rate and no charge for the page changes, which King enjoyed
2372 and had enjoyed for many years at International in Wilkes-Barre, gave King an advantage on short runs?

A. That is so.

Q. But when NEA could work out a readyprint which boosted the total run to approximately 100,000, then NEA was, price-wise, competitive on the printing with King?

A. Yes.

Q. So that is the only thing you referred to when you said, "This job should present no problems competitively"?

A. That is exactly what I meant.

Q. There has been considerable talk about King Features practices in trying to get a commission when it lost a run?

A. Yes.

Q. No matter how often King Features tried to shake down Greater Buffalo or actually shook it down, as in the case of Waterloo, Iowa and the Harte-Hanks papers, there is no doubt NEA never did that, is there?

A. No, sir, they didn't.

Mr. STEVENS: That is all, thank you.

Mr. RAICHLE: I have one or two questions.

REDIRECT EXAMINATION

By Mr. RAICHLE:

Q. If you hadn't purchased International Color Printing at Wilkes-Barre, nonetheless would you have built or
2373 opened a plant in the southeast somewhere?

A. Yes, sir.

Q. One more subject matter of inquiry. You said something to his Honor yesterday about not having raised prices in twelve years; did I hear you correctly?

A. That is right.

Q. Does that mean each time you had a labor increase that you absorbed the increase?

A. For twelve years.

Q. And when I say you, of course I mean Greater Buffalo Press—

A. Yes. —

Q. In its various plants?

A. Yes.

Q. Now, in one of the plants did you, as the price of newsprint went up, increase the price?

A. Yes. The price of newsprint went up, we passed along the same amount to the newspapers. In other words, they paid the increase, no more.

Q. And if your price reaches a level slightly higher than the price you do charge, would it then be cheaper for the newspapers to print them themselves?

A. That is very possible.

Q. You said that the ordinary newspaper with modern equipment can readily print its own?

2374 A. They can.

Mr. RAICHLE: That is all.

The COURT: Mr. Koessler, I have learned over recent years food chains like Loblaw's—I never have had experience, of course, in that field—but I have learned that the margin of profit is extremely small, they survive on a vast volume. You said the other day something about your margin of profit being very small?

The WITNESS: Yes.

The COURT: At least as the layman might look at it, it would be small. Is it true then that your success today and in the past years has been based on large volume?

The WITNESS: That is right, sir.

The COURT: In other words, you must do a vast business?

The WITNESS: Yes.

The COURT: In order to survive?

The WITNESS: To make any money, yes.

The COURT: Because you have this vast volume you were able to not pass on greater costs to newspapers, is that

2375 the fact?

The WITNESS: That is right.

The COURT: All right. Is there an analogy between your business and the food type business?

The WITNESS: In that the profits are very small, the percentage of profits are very small.

The COURT: All right.

RECROSS-EXAMINATION

By Mr. BERNSTEIN:

Q. Mr. Koessler, in answer to Mr. Stevens' questions about the Jacksonville, Florida Times Union, on P-33, I understood your testimony to be that you merely wanted to tell NEA that this was a Greater Buffalo house account and that Greater Buffalo would compete. Was that the substance?

A. We didn't tell them anything. You see the letter. We didn't know anything about that, that hasn't anything to do with us at all.

Q. Then if the record shows that your testimony was that you merely wanted to show NEA that this was a house account and that you would compete, that is incorrect?

2376 A. What are we talking about; Jacksonville?

Q. The Jacksonville, Florida Times Union.

A. We bid on the Jacksonville Times Union.

Mr. BERNSTEIN: I object, your Honor. That isn't the question. The question is—

Mr. STEVENS: I object. I think he is entitled to answer. You haven't accurately stated what he said.

The COURT: Mr. Bernstein, I am not going to split hairs over things. Sooner or later Mr. Koessler is going to have a full recital of whatever he wants to tell me here.

Mr. BERNSTEIN: I withdraw the question.

The COURT: Let him explain. As I get it, there is a newspaper jargon that these men know, I do not know it, and there appears very clearly to be things said regularly which have other interpretations entirely. I am completely an outsider on that. I need all the help I can get.

Mr. BERNSTEIN: I want to be careful that we get Mr. Koessler's recollection and not a repetition of some document
2377 that he has not read with a characterization that gives his present state of mind. I want to explore the facts.

By Mr. BERNSTEIN:

Q. My question to you, Mr. Koessler, is this. With respect to P-33, the piece of paper that you had in your hand, and

that Mr. Stevens questioned you about just a few minutes ago, this morning——

A. Yes. ——

Q. Is it a fact—this is my question—is it a fact that with respect to the Jacksonville, Florida Times Union, you were trying to tell NEA that that was a Greater Buffalo house account and they could expect you to compete for that account?

A. I didn't tell them anything. Look at this.

Q. Thank you very much.

A. That is an inter communication, that hasn't a thing to do with me.

Q. Thank you very much. That is what I wanted to clarify. When the Greater Buffalo Press purchased the stock of International in June, 1955, what press release or publicity did you give to your purchase of the stock of International?

2378 A. I gave none to no one.

Q. Why was that?

A. We don't go around looking for publicity. We don't do those things.

Q. Was it generally known in the trade that Greater Buffalo owned——

A. They found out about it in Wilkes-Barre. I didn't inform anybody about it.

Q. When?

A. You will have to ask Mr. Gorman about it.

Q. I will. In your opinion, you tried to keep yourself informed of what was going on in the trade; did you have any indication at about the time you purchased the stock of International that other of your competitors, other newspapers, knew that Greater Buffalo had purchased the stock of International?

A. No, I don't think anybody knew about it.

Mr. STEVENS: It is a small point—just a moment, please—I think you want the record accurate. They did not purchase this stock, to my recollection. I don't believe they purchased the stock of Buffalo Color Press.

Mr. BERNSTEIN: I am talking about International, 2379 purchased the stock of International. When Greater Buffalo purchased the stock of International.

Mr. STEVENS: Excuse me.

By. Mr. BERNSTEIN:

Q. So the fact is, Mr. Koessler, that to your best knowledge and belief it was some time—Greater Buffalo Press owned the

stock of International Color Printing for some time before the people in the trade generally knew about it, is that correct?

A. I think so, yes.

Q. And was one of your reasons in keeping this quiet to lead the newspapers to believe that when King came in to solicit their business, or NEA came in to solicit their business or Greater Buffalo came in to solicit their business, it was really all being printed in one place?

A. No. We knew some time or other the information would get out. We just didn't hire any press agent to put it in the newspapers.

Q. Now, with respect to Buffalo Color Press and P-27, the contract that you bought this from Buffalo Color Press, there were accounts listed in that contract. I understand your testimony to be that when NEA didn't have the contract
2380 to print that account, then Greater Buffalo didn't pay NEA a commission, is that correct?

A. If they lost the account the commission stopped.

Q. Let's explore that a bit. If NEA lost the account, it was not then being printed at Greater Buffalo?

A. Right.

Q. Do you know of any account, can you name one account that NEA had the contract with and Greater Buffalo took the account away from NEA and didn't pay NEA a commission and continued to print at the Greater Buffalo Press?

A. Yes.

Q. Which one?

A. Atlanta, Georgia.

Q. Atlanta, Georgia had been printing its own?

A. No. Atlanta, Georgia, we had the account through NEA.

Q. When was that, what period of time?

A. Oh, we have had it a long time, back in the forties or fifties.

Q. For NEA?

A. NEA—we printed the job first through NEA, they got the account.

Q. How long did you continue to print it through NEA?

A. Three or four years, maybe longer.

Q. When did it become Greater Buffalo's account?

2381 A. The Atlanta Journal wanted to contract directly with Greater Buffalo and we discontinued the commission to NEA.

Q. Did you discontinue the commission to NEA after Greater Buffalo purchased Buffalo Color Press or before?

A. This was before.

Q. So that you were paying NEA commissions on business before you purchased the Buffalo Color Press?

A. We were paying commission when they were—when they held the contract for the job, we paid them a commission, when they lost the contract and we took it ourselves, we didn't pay them.

Q. Now, I am talking about the time prior to the Greater Buffalo purchase of NEA's printing plant in Buffalo, I am talking about that time.

A. That was prior to then, yes.

Q. At that time—

A. We took over the Atlanta Journal in 1950 and I think the commissions were stopped then.

Q. All right. Let's take 1949, before you took over the Atlanta Journal. At that time did NEA have a contract with the Atlanta Journal?

A. Yes.

Q. Did you quote NEA a price for printing the
2382 Atlanta Journal?

A. Yes.

Q. And did you give them a commission over and above that price?

A. No. It worked the other way, as I recall. We printed at a certain price for NEA, NEA sold it to the Atlanta Journal. In other words, we were sub-contractors in that case.

Q. Where does the element of commission come in?

A. They sold it for more than—our price to them was less than they sold it to the Atlanta Journal, I assume.

Q. You call that a commission?

A. I don't call it a commission, no. It is a profit you make on a job that is sub-contracted.

Q. That was a profit in 1949, the Atlanta Journal, you were not paying them a commission, isn't that correct?

A. That is the way the arrangement was. We printed it, they sold it to the Atlanta Journal. I assume they made money on it, they kept it.

Q. In 1950 when Greater Buffalo took the account away from NEA, NEA couldn't make any profit on that account, is that correct?

A. They didn't.

Q. They didn't?

2383 A. No.

Q. Now, I am talking about—name me one paper after 1955, when Greater Buffalo purchased from NEA the Buffalo Color Press plant and agreed to give them a commission on certain specified newspapers and on all new business printed at the Greater Buffalo Press, name me one account from that time thereafter when Greater Buffalo took the account away from NEA and didn't pay them a commission?

A. The Miami News.

Q. When was that?

A. I don't know the years NEA had the contract for the Miami News.

Q. What happened?

A. The Miami News decided they wanted to contract with us directly. We took the contract, we cancelled the commissions.

Q. Had you been paying commission up to that time?

A. Yes, it was NEA's business.

Q. What was the discussion with NEA—

A. Wait, I don't think we were paying a commission, it worked the same way, we did the job at a certain price, they sold it to the Miami News.

Q. Was that after you had purchased Buffalo Color Press?

A. I think so.

2384 Q. Can you recall any accounts that King took away from NEA and were printed at the Greater Buffalo Press plant and were not printed at Wilkes-Barre, not printed at Lufkin, not printed at Sylacauga? Can you think of any of those? Can you think of any newspaper account, after you purchased Buffalo Color Press, that King took away from NEA that was not printed—that was printed at the Greater Buffalo Press plant in Dunkirk or Buffalo?

A. Oh, I am sure there were some. They just don't come to mind.

The COURT: What was your question, printed or not printed?

Mr. BERNSTEIN: My question—

The COURT: Any account that King took from NEA which was what?

Mr. BERNSTEIN: Printed at the Greater Buffalo plant in Dunkirk or Buffalo. In other words, your Honor—Mr. Koessler, is this correct—most of King's business was printed either at Wilkes-Barre, Sylacauga or Lufkin.

The COURT: What was wrong with that?

Mr. BERNSTEIN: I am trying to explore the accuracy
 2385 of the witness's testimony that Greater Buffalo never
 paid a commission on any run that was lost to NEA
 after NEA lost the account. That is quite conceivable, your
 Honor, because if the run wasn't printed at Greater Buffalo
 Press they would not pay the commission. If King took the
 account away and printed at Wilkes-Barre or Lufkin or
 Sylacauga, naturally, NEA wouldn't get a commission on that.
 On the other hand, if that account was printed in Buffalo, then
 NEA would get a commission on that because the contract
 provided that NEA would continue to get a commission on
 any one of its accounts as long as the printing was done in
 Buffalo or Dunkirk.

The WITNESS: Mr. Bernstein, we disagree with that.

Mr. BERNSTEIN: I understand.

The WITNESS: The facts are that NEA never got a Commis-
 sion on any business that we printed for King Features,
 2386 never.

Mr. BERNSTEIN: Right, and I will argue later to the
 Court that that is for another reason, not the one that you sug-
 gest. We will go on to another matter.

By Mr. BERNSTEIN:

Q. On P-32, with respect to Albuquerque, New Mexico, that
 newspaper, in 1956 Greater Buffalo Press was trying to get that
 business, is that correct?

A. Yes.

Q. And——

A. And since.

Q. You didn't succeed in 1956?

A. No.

Q. You said that Acme got the business in——

A. Acme had the business.

Q. And continued to retain it?

A. Yes.

Q. Greater Buffalo Press has continuously sought to get it?

A. Sure.

Q. One final point. You reconfirmed this morning what
 I understood your testimony to be right along; that
 2387 the Buffalo Color Press plant was old, inadequate, un-
 able to successfully compete and successfully operate?

A. Yes.

Q. Why did you buy it?

A. Well, we were doing a lot of business for NEA and they wanted to transfer all the business, the business of Buffalo Color Press, and they wanted to get rid of some of the machinery.

Q. The contracts with the newspapers were held with NEA is that right?

A. I think so, yes.

Q. Buffalo Color Press was doing the printing for NEA?

A. At that time, yes.

Q. And you wanted to get the business that was then being printed at the Buffalo Color Press plant, not intending to continue the Buffalo Color Press at all, is that correct?

A. We didn't continue the Buffalo Color Press plant, no.

Q. You didn't intend to, did you?

A. No.

Q. Well, is this a truthful statement or not—how much did you pay for that?

A. \$25,000.

Q. \$25,000, a relatively insignificant amount. Was the 2388 junk equipment worth \$25,000?

A. We took some pieces of equipment out of there that if we bought them it would cost—we come out all right, we sold one press in Mexico, took stereotype equipment out to Greater Buffalo.

Q. How much did you sell the press for in Mexico?

A. \$5,000.

Q. How much was the value of the junk stuff you took out of there, \$5,000?

A. No, no, more than that. I mean, they had good stereotype equipment.

Q. They did? It wasn't as junky as—

A. The press equipment was pretty junky.

Q. What other equipment was good?

A. They had one folder that was good.

Q. What else?

A. The folder itself would have cost \$25,000 if we had to buy it new.

Q. So that you did get valuable equipment for the money that you paid?

A. In terms that we could use it, if we had to go out on the market and buy it new, it was a bargain.

Q. So that any other color printer could have bought the

equipment, Buffalo Color Press, and used it to the same advantage you did?

2389 A. I am sure they could, if they offered to, it would have been sold to them too.

Mr. BERNSTEIN: I have no further questions.

Mr. RAICHLE: Nothing further.

The COURT: As I remember, you had rather a close relationship with that manager of Color Press. You said one time that you used to go and patch him up from time to time?

The WITNESS: That is right.

The COURT: His machinery?

The WITNESS: Many times.

The COURT: All right. I guess that is all.

Mr. RAICHLE: That is all, Mr. Koessler.

(Witness excused)

2390 JOSEPH J. GORMAN, called as a witness in behalf of the Defendant, and being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. MOORE:

Q. Mr. Gorman, where do you live?

A. 581 Meadow Lane, Kingston, Pennsylvania.

Q. Where is Kingston?

A. Next door to Wilkes-Barre, across the river from Wilkes-Barre.

Q. How long have you lived in the Wilkes-Barre area?

A. All my life.

Q. How old are you?

A. Pushing 71.

Q. And what is your present occupation?

A. I am president and general manager of International Color Printing Company.

Q. How long have you been general manager of International Color Printing?

A. International is a successor, a corporate successor to Telegram Publishing Company. I have been general manager for forty-six years.

Q. Now, what did you do before that?

A. I was a reporter.

Q. And where did you work as a reporter?

2391 A. I worked as a reporter on the Wilkes-Barre newspapers.

Q. What did you do before you were a reporter?

A. I worked in the mines.

Q. Whereabouts?

A. Wilkes-Barre, Pittston, Pennsylvania and West Virginia.

Q. During the time that you were a reporter what was the Wilkes-Barre paper?

A. The Wilkes-Barre Evening News.

Q. Is that the company that eventually became International Color Printing Company?

A. That is not correct. I left the Wilkes-Barre News to become the Wilkes-Barre correspondant for the Elmira Telegram, which was rather strange because Wilkes-Barre is 150 miles from Elmira.

Q. And then what was your next association? What happened to that job?

A. I was the local correspondant of the Elmira Telegram until Mr. Ralph Govin, Sr. bought the Elmira Telegram from Harry Brooks, and then we—I continued to be the local correspondant until he sold the Elmira Telegram to the Gannett chain and then on my suggestion, which wasn't a fortunate one, he kept the Wilkes-Barre branch and turned it into a Wilkes-Barre Sunday newspaper. I was the editor and general manager, and it was too fast a step, because that
2392 means I was editor and general manager six years after leaving the mines.

Q. How old were you then?

A. About 24.

Q. And what was the name of that paper?

A. The Wilkes-Barre Sunday Telegram.

Q. Now, what happened to that paper?

A. It flopped dismally because, primarily, I was too soon after the mines. Also, we had no equipment of our own. We rented our equipment from the Evening News. We paid a very heavy overtime on Saturday night. Frankly, I don't think I was fully equipped to follow my predecessor.

Q. You—

A. The time came when a Pittston newspaper, a small one, housed in a very small dwelling, had a fire. They had a two deck hole single width press, they had two or three linotype machines. The fire damaged the press to some extent and damaged the linotype machines to the point where the newspaper couldn't proceed, and I conceived the idea of getting out

of our overhead troubles by operating—printing the paper in Pittston, and I suggested that to Mr. Govin, and we tried to take the press and equipment over in that little house and print the Sunday newspaper.

2393 Q. Now did there come a time when this company owned by Mr. Govin ceased to operate as a newspaper?

A. In early 1924 the fire took place in the building of the Pittston Press. After I talked to Mr. Govin, I went to New York to R. Hoe and Company, who owned the press, had taken it back on a mortgage from the Pittston Press, to see if we could take that plant over and print our newspaper in it. While sitting in the library of R. Hoe and Company, 504 Grand Street, waiting for a salesman, I saw a brochure on the table. It said something to the effect that this press—and the press was pictured there—could print two colors at such and such a speed, and the thought came to me maybe we could print our comics on that press because at that time we were buying our comics from the Buffalo Times which later became the Buffalo Color Press. The salesman came out and I asked him this question. He said, "No, you need four colors to print a comic." I said, "How would we go about getting four colors?" He said, "Buy two more decks." "Where would we get them?" He said, "Down in Allentown there is two used decks, two bottom decks. You can patch them to the top of the two you have got and print four colors." Then it occurred to me we could print 2394 our own comics and at the same time, or immediately after, the thought followed that while printing for ourselves, perhaps we could print for others, just as the Buffalo Times was doing.

Q. The Buffalo Times?

A. The Buffalo Times, later become the Buffalo Color Press, and which was selling us our comics.

Q. Well, at any rate, Mr. Govin, through this corporation acquired these facilities?

A. That is right. We sold the newspaper for \$2,000 which was—

Q. And the corporation's name was changed to International Color Printing?

A. International Color Printing Company.

Q. And what year was that?

A. That was in 1924.

Q. Now, who was the first customer of International Color Printing Company?

A. King Features Syndicate.

Q. And how did that come about?

A. I went to see King Features Syndicate. First I saw Mr. Koenigsberg, who was head of the syndicate at that time. He turned me over to Mr. Paquin. Mr. Paquin said that if we could do the job, he would be interested in letting us have some work. I didn't know anything about printing comic supplement or prices. I went out to a plant in Kansas City and stayed a while until I learned something about printing and something about prices, and came back to see Paquin just about two days before it was time for me to be married. He said the price is all right if the job was all right. So we rebuilt the press, took a chance, they gave us an order for printing 300,000 weekly.

Q. At that time what was the business of King Features?

A. At that time King Features was selling features, comics, the same as they are today, but also they were selling—they were selling—I mean they were selling comics, features, columns, the same as they are today—they were also selling readyprint and they were having the work done in two or three different plants, namely, the Barrack Publishing Company in Kansas City, McClure in Brooklyn, Richmond Times Dispatch, and a few in Indianapolis.

Q. We have had a lot of talk about readyprint. Would you just tell us in simple language what you mean by readyprint?

A. A readyprint is a combination of pages, which is to be used for a number of newspapers without changing the pages as you move from paper to paper, and King Features listed in that 300,000 about four or five readyprints, different readyprints, for a flat price per hundred thousand, with the provision that the overall number of plate changes per hundred thousand would never go higher than a certain figure.

Q. Now, when you refer to a readyprint, you refer to a section of four to eight comic strips printed on regular comic strip paper?

A. It could be four, eight, ten, twelve, sixteen. Readyprint is generally smaller than sixteen.

Q. These readyprints, the same readyprints would go to a number of papers?

A. That is right.

Q. And the only change that will be made is that the mast-head of each paper will be printed on their——

A. As far as the readyprints are concerned. Sometimes we would add one or two pages to an existing readyprint.

Q. Was this the bulk of your original business with King?

A. You mean comic printing?

Q. Yes.

A. That is all we did for King.

Q. Now, in addition to King, the King business—King was the first customer?

A. That is right.

Q. Did you obtain any other customers?

A. All of our dealings at that time were with Mr. 2397 Paquin, the service manager. He gave us the right to go out and look for business on our own. We went to Asheville, North Carolina, and we picked up a supplement there. We went to Providence, Rhode Island, and we picked up a supplement there. We never got any other additional business on our own. We kept those two only until Mr. Nicht come into the picture and he suggested we turn those two runs over to King Features and from that time on print exclusively for King.

Q. Now, when did Mr. Nicht come into the picture?

A. About 1927. He was sales manager prior to that. Nicht started with the Hearst organization about 1917. He worked for INS, International News Service, and King Features. He became sales manager about 1921 or 1922. He had no connection with us to speak about, no direct connection, until 1927. From 1927 until he died, he was practically the sole representative of King Features as far as we were concerned.

Q. He died in——

A. I think 1964.

Q. Now, during this period—directing your attention to the period from 1927 until 1955, when the stock of International was acquired from Greater Buffalo—did International employ any sales people?

A. Never.

2398 Q. Did International ever solicit an account?

A. Never after 1927.

Q. And you printed exclusively for King Features?

A. Correct.

Q. During this period of 1927 to 1955, did you or anybody else on behalf of International ever engage in sales activity in company with King?

A. Yes. From time to time I went out with King Features salesmen for the purpose of explaining press capacity, flexibility of equipment, the size sections which could be obtained, and transportation; always with the instructions, the understanding, that when it came time to talk about price I should leave the room.

Q. And did you?

A. I did.

Q. So that you never at any time had anything to do with the negotiations of contracts between King and its newspaper customers?

A. No negotiations directly with the newspapers.

Q. Directing your attention again to the period of 1927 to 1955; would you describe for the Court the operational relationship you had with King; how did you operate as between International and King?

A. You mean the corporate relationship, that is, between me and King Features?

2399 Q. Well, no, Let me ask you, if I can rephrase it better, did you operate pursuant to a contract?

A. Oh, starting about 1927 we entered into a contract under which we had to print exclusively for King. I have forgotten the length of the first contract, I think perhaps it was for ten years. Then later there was another ten-year contract, and a three-year contract. But from 1940 on we have been under a six-month cancellation basis.

Q. From 1940 on you had no contractual relationship except one terminable on six months' notice?

A. 1942, 1943, I'm not exactly certain as to the year of the contract.

Q. And what was the financial arrangement for printing; was each paper printed on a separate basis or did you have a formula?

A. We had a flat basis per hundred thousand over the greatest part of that period. Mr. Nicht had the idea that the good papers, the big papers, should pay for the little ones. The little papers we certainly made no money on, the big papers we might have made a little. His theory, I think, was that he wanted to sell small papers if he could, because he could sell features. He

2400 wanted everything, large and small. But he did not preclude small newspapers because we were willing to take them, and did take them.

Q. Now, over this period of time did you have negotiations with Mr. Nicht with respect to obtaining more money for International for printing?

A. I would say over forty years I talked with Mr. Nicht nearly every day. I had letters several times a week. I met with him at lunch or otherwise not less than 500 times, and the greatest part of our conversations was about more money for us, more flexibility for him, more expansion to suit him, but despite our demands for money throughout the years we were never able to get more than enough to allow us 1% or less net profit.

Q. Now, during this period of time were there occasions when Nicht would call you with respect to cutting your price on a particular job?

A. Frequently.

Q. And this was in connection with some negotiations he was carrying on to obtain the work?

A. That is correct, and very often I gave them to him, special prices, and on occasion—I learned later that after he had the contract signed, he would call me for a cut in price, I gave it to him, and then I learned that before I gave him the cut, the contract had already been signed. I learned that accidentally through correspondence that came to my office. I 2401 learned it through Hornady, his assistant, I learned it through Capparell, one of his assistants.

Q. Did you discuss this with Mr. Nicht?

A. I discussed that with Mr. Nicht and he said, "Well, that is business."

Q. Now, did there come a time when you had discussions with Mr. Nicht with respect to the ability of International to produce the printing of color comic supplements at a cheaper price and in a more flexible manner?

A. That was constantly part of our discussions, back from 1930 on, and also a good part of our discussions over thirty years was what he considered to be the need for a plant in the south and a plant in the middle west.

Q. And in addition to these other facilities, did he discuss with you the facilities that you already had at Wilkes-Barre and the efficiency of their operation?

A. He had very little respect for the efficiency of our operation at Wilkes-Barre, despite the fact that he, personally, had been in the plant only once in 40 years.

Mr. STEVENS: Excuse me, would you read that last answer.

2402 (Thereupon the last answer was read by reporter.)

By Mr. MOORE:

Q. Now, over the years you had good operators, good superintendents in your plant, did you not?

A. I think we had very fine press foremen; a very, very excellent machinist superintendent, who was also a craftsman. Mr. Nicht kept constantly referring to what Buffalo was doing in the way of flexibility.

Mr. RAICHLE: I didn't hear that.

The WITNESS: What Buffalo was doing in the way of flexibility.

By Mr. MOORE:

Q. You mean Greater Buffalo?

A. Greater Buffalo. Now, when you say did I have good men? I did have good men. We bought plants from Hearst, which they ran at 14,000 per hour, we rebuilt them and run them at 30,000 per hour. So, therefore, we had good men. But he claimed, and he was right, that despite the fact that we had improved our production 100%, we were still not in a class with Greater Buffalo Press from a production and flexibility standpoint.

2403 The COURT: Excuse me. What does flexibility mean?

The WITNESS: The ability to print a great number of different size sections, from four pages up to say, sixty-four with multiples of two.

The COURT: Thank you.

By Mr. MOORE:

Q. Now, in consequence, as a result of these constant conversations and complaints of Mr. Nicht, did you look into this matter of improving your operation further?

A. Over a period of 40 years I have been in every color printing plant which has been in existence in that period, even Greater Buffalo Press, clandestinely.

Q. In other words, did there come a time when you got into the Greater Buffalo Press plant when they didn't know about it?

A. I got in there twice when they didn't know about it. I learned that if I tried it again I would be thrown out on my ear.

Q. When was this?

A. My first visit to Greater Buffalo was about 1933, 2404 when they had a plant on Niagara Street, shortly after they had purchased the press from the Syracuse Herald. I knew about the purchase of the Syracuse press because I had driven a Model T Ford, at the request of Mr. Nicht, to Syracuse, to make an investigation of the cost of their printing, because they were doing their own work. I walked into the Greater Buffalo Press—into the Syracuse plant and told them frankly what I was after. Mr. Nicht thought that he could do the printing cheaper if I would talk about their costs, if I would show them they figured their costs too low. Mr. O'Hara said, "You are too late, we have sold the press to Greater Buffalo."

Q. Well, so you were in the Greater Buffalo plant, you say?

A. I was in the Niagara Street plant, and later I was in the Grote Street plant.

Q. Without their knowledge?

A. Without their knowledge. I had a narrow escape in the Niagara Street plant because there was a man named Vanette, a sales engineer I knew, who happened to be there at the time, and he came to me and he said, "You better get out, it is going to be embarrassing for me if I have to tell them who you are." At that time Kenneth Koessler was casting plates—

Q. You were watching?

2405 A. Koessler's father was on the floor, doing general supervision.

Q. In addition to the trips you made there, did you, on occasion, have some of your people get into the Greater Buffalo?

A. They were in the Buffalo plant on Grote Street, they also went into the Dunkirk plant. They came home to me with the general description of the lineup of the presses, the general operation, but they failed completely in their attempt to learn anything about preregistry.

Q. How about you, did you learn anything about preregistry?

A. No, I did not. I told Mr. Nicht that I had failed, I just frankly didn't know how to preregister, I did not know how to secure some of the flexibility he was after. He said, "Well, why don't you go to Hoe and see what they can do."

Q. Who is Hoe?

A. A manufacturer of press equipment. I did go to Hoe and Company, I talked to Mr. Fred Lamanch, the chief engineer. I told him our problem and he said, "Buffalo—Greater Buffalo, we find can do many things that we can't do." I went to Goss Printing Press Company in Chicago and got the same
2406 information. The next time Mr. Nicht complained, I reported this to him. He said, "Well I don't believe you, I will go and find out myself." Now, he went to Hoe and Company, despite the fact he hadn't the slightest idea what he was looking for, and he talked to the chief engineer, and they told him what he was expecting me to do in a short period of time with practically no money was an impossibility.

Q. Now, did you, during the course of this period, talk to Nicht about increasing his price to International for the purpose of enabling you to do some of this research and development, during the period say 1927 to 1955?

A. Constantly.

Q. And what was his answer to those?

A. More often than not I left the room with less than I had when I went in.

Q. Now, directing your attention to the period beginning about 1950 and continuing on to 1955, would you say that your difficulties with Nicht had increased?

A. He became more persistent than ever with regard to a plant in the south, and I was just as insistent that a plant in the south, to be built by us, was an impossibility without a long-term contract with King Features at a higher rate, which
2407 would enable us to obtain a loan from a bank, and with a profit sufficiently large to allow us to pay dividends and amortize that loan within a reasonable period of time. I repeated that same thing over and over and over, by telephone, personally and by letters.

Mr. MOORE: Will you mark this for identification?

(Thereupon document referred to was marked Defendant Greater Buffalo's D-7 for identification.)

By Mr. MOORE:

Q. Now, during this same period, from 1950 to 1955, did Nicht, in his negotiations or conversations with you, refer to placing King business at some other plants?

A. Constantly threatening and mentioning Eastern Color, Star at Wilmington, Southern Color and finally Greater Buffalo—

Q. And——

A. — also the possibility Hearst would do their own printing in their own plant.

Q. Now, about Hearst doing their own; did Hearst own some modern color printing facilities?

2408 A. They owned two plants. At one time they owned plants in Baltimore, New York, Chicago, San Francisco, Los Angeles. They junked those eventually—what we call junk then—they sold them to us and others and we used them. They purchased for approximately six million dollars the equipment for two plants in San Francisco and Chicago, which were supposedly, in the opinion of Hoe and in the opinion of the Hearst experts, the last word in color printing, color printing equipment.

Q. And these plants, the facilities of these plants were capable of printing all the color comic supplements that King Features placed with you, were they not?

Mr. BERNSTEIN: I object to the leading. This is a delicate area. I would like to have the witness testify.

The COURT: You know the equipment they had?

The WITNESS: Yes. I would say——

The COURT: Could they take over?

The WITNESS: With some changes in the equipment to suit the business.

By Mr. MOORE:

Q. Did you find out that during this period of 1950 to 1955 that Nicht was negotiating to place King business
2409 with other printers?

A. He told me so.

Q. The ones you mentioned; Southern——

A. Southern, Eastern, Star, Greater Buffalo.

Q. Now, during the period from 1927 to 1955, who owned the stock of International?

A. In the year 1924 and early 1925, the stock was owned by Ralph Govin, Sr. I owned one share, John W. Booth owned another share. Mr. Govin died in approximately the middle of 1925 and the estate was left to his wife, Mrs. May M. Govin. She became the sole owner of the stock.

Q. And——

A. No, I beg your pardon, she became owner of 50% of the stock. 25% went into the ownership of Ralph Govin, the son: 25%, Mazie Govin, the daughter.

Q. Did any of the stockholders live in Wilkes-Barre?

A. Mr. Govin never lived there. Mrs. Govin never lived there. Ralph Govin, Jr. lived there on and off between running a newspaper in Havana or attempting to run it, on and off until 1945, and he came back not at all after that. Mazie Govin never lived there.

Q. Now, so that at least by 1950 and continuing on to 1955, none of them lived in the Wilkes-Barre area?

A. No.

2410 Q. And who ran the company?

A. I did.

Q. And did you run it pretty much on your own?

A. On my own, from the beginning until the end, and practically the only discussion I ever had with owners was when we wanted to get into the expansion a little bit or when they wanted dividends, which was quite frequently.

Q. Just historically, what was the investment in this company?

A. Mr. Govin, Sr. had several companies. From one company or another we obtained sums of money totalling \$50,000 between 1925 and 1927. That was the total investment and that was repaid about 1928 or 1929. That was the sum total of their investment.

Q. And the owners put no further money into the business?

A. At one time we borrowed \$35,000 from Mrs. May Govin—not May—Mazie Govin, who later became Mrs. Schoolmacher, then Mrs. Von Lochorst and then Mrs. Scofield.

Q. From time to time, up through 1955—

The COURT: You mean the woman changed her name several times?

The WITNESS: Three times she married.

The COURT: We'll take a short recess.

2411 (Thereupon the Court was in recess at 10:30 A.M.)
(Proceedings resumed, pursuant to recess, commencing at 11:10 A.M.)

By Mr. MOORE:

Q. Mr. Gorman, I show you Exhibit D-7 for identification, and ask you if this is a copy of a letter you received from Mr. Nicht, dated August 23, 1951?

A. Just to identify it or read it?

Q. Just identify it.

A. I think it is a copy of a letter received from Mr. Nicht.

Q. And you are familiar in general with this letter?

A. I received so many letters, I would have to look at it.

Q. Well, I want to ask you whether or not this letter is representative of the discussions and correspondence that you had with him concerning the operations of International during this period of time?

Mr. BERNSTEIN: I object, your Honor, on the grounds——

Mr. MOORE: I will withdraw the question. I will offer the letter in evidence.

2412 Mr. BERNSTEIN: No objection to the letter going in evidence.

(Thereupon Defendant's Exhibit D-7 previously marked for identification, was received and marked in evidence.)

By Mr. MOORE:

Q. Now, directing your attention to the period beginning in 1950 and continuing through June of 1955, can you state what the financial condition of International was during that period?

A. It is my recollection that in 1950 or 1951 we amended whatever contract we had to provide that from that time on we would not get from King Features approximately \$600.00 per week, which was extra compensation, flat, weekly, obtained during the war years. At the same time our price per thousand was reduced one cent. Why that happened I don't know, unless it was the result of Mr. Nicht's persistence.

Q. Now——

A. Starting——

Q. Directing your attention to this period, what was the financial condition of the company?

A. It is my recollection that in 1952 we started to
2413 show a deficit in working capital.

Q. Beginning in 1952 your current liabilities exceeded your current assets?

A. By an amount I can't recall, but built up to approximately \$100,000 deficit at the end of 1954.

Q. At the end of 1954 you had a minus \$100,000 working capital?

A. Right.

Q. You had no working capital?

A. Right.

Q. Now, what happened to the profits of International during this period?

A. Steadily decreased to the point where in 1954 we did an \$8,000,000 volume for \$11,000 net profit.

Q. During this period what position did the stockholders take as to dividends?

A. One stockholder in particular was more or less blinded to the fact that we had little or no money to work with. He felt that we could continue to pay dividends, he insisted, and he was backed up by the attorney for the company and finally his sister went along, and we did pay dividends in those four years, which contributed to our deficit. That was contrary to my best judgment and against my wishes but——

Q. Did you express your judgment and your wishes to 2414 the stockholders?

A. Over and over and over again.

Q. Now, did there come a time when the owners, the stockholders of the company, expressed a desire to sell?

A. They had a desire to sell for some time, if they were not able to get dividends. They would have liked to have kept the company if they could have got dividends. In lieu of not getting the dividends, they were willing to sell the company.

Q. What, if anything, did they do about that?

A. On the instructions of the Board of Directors I talked to Mr. Nicht on the telephone I think about the middle of 1952, and told him in this way, they were not anxious to sell, but if King Features wanted to buy—I mentioned this to Nicht because he was so anxious that the people uptown buy the plant——

Q. You say "the people uptown"?

A. The general management.

Q. The top management of Hearst?

A. That if he wanted the plant the directors would sell it to him for \$1,000,000 approximately.

Q. Now, what, if anything, was the King response to that?

A. Mr. Nicht's response was, crudely speaking, a horse laugh.

Q. And did he state whether or not the Hearst people 2415 had rejected the offer?

A. They rejected constantly his importunities to buy the plant. He didn't tell me they rejected that offer and I said, "Well, can the directors see the general management?" He said he would make arrangements.

Q. Can the directors of International——

A. See the general management.

Q. Of Hearst?

A. Of Hearst. He arranged such a meeting.

Q. Did you attend such a meeting?

A. I attended the meeting.

Q. What was the outcome of that meeting?

A. They didn't want to have any part of it.

Q. Hearst?

A. Hearst didn't want to have any part of it.

Q. Did they express any reason for not wanting to buy it?

A. They didn't want to have any part of a printing plant, period.

Q. Who on behalf of Hearst expressed——

A. Mr. Gortatowsky, the general manager; Mr. Lewis who, I think was the treasurer; and possibly—I am not sure—Mr. Marcuson, who is now general manager, who was the financial man at that time.

Q. Was there any discussion about price at that time?

2416 Did they discuss buying at a lower price?

A. They were not interested in the plant.

Q. Subsequent to that meeting did you have any further discussions with Mr. Nicht about Hearst buying the plant?

A. Constantly.

Q. And what was his——

A. Mr. Nicht told me that he took it up with the people uptown once more. He, I recall, gave me the contents of a letter which Mr. Greene, the general manager of King Features Syndicate, had given to him, in which Mr. Greene said that some of the people uptown or one of the persons uptown stated it was his knowledge that Woolworth's sold 50,000,000 gumdrops a year and never made one and made money, that as far as he was concerned, the printing business was a headache, but if your people want to talk further about it, I will discuss it.

Q. Well, your discussions with Nicht proved fruitless, as far as any sale?

A. Right.

Q. Did Nicht ever make any suggestions to you at any time that you sell the company to anyone else?

A. No.

Q. Did he ever suggest that you sell the company to

2417 Greater Buffalo?

A. No.

Q. Did there come a time when you met Walter Koessler?

A. Yes.

Q. When was that?

A. It is my recollection—this is thirteen years ago—it is my recollection it was in December of 1954.

Q. December of 1954?

A. Yes.

Q. And you had never met him before?

A. No.

Q. And how did that meeting come about?

A. I expressed a desire to meet him. I expressed my desire to Mr. Nicht, and Mr. Nicht said if I wished to meet him he would make the arrangements.

Q. In other words, you suggested that you meet——

A. Yes.

Q. —Mr. Koessler?

A. Yes.

Q. Did you state any reason why you wanted to meet him?

A. I didn't state any reason, but I will state my reason now.

Q. No. There did come a time when you met with Mr. Koessler, is that right?

A. Right.

2418 Q. At the time you have described?

A. Yes.

Q. And what was the substance of your conversation with him at your first meeting?

A. We talked shop, talked about mechanics, talked about unions, talked about newsprint, we talked about the south, and in the discussion of mechanics, I brought up the matter of pre-registry. I didn't think he was going to tell me how it was done, but I brought it up just the same, and I gave him the impression, the knowledge, I think, we were not doing so well.

Q. And did you have further meetings with Mr. Koessler?

A. Yes. At that first meeting he said he thought that the business could be made profitable with his methods and that perhaps he might be interested in investing in it if the price wasn't too high.

Q. Now, was there any discussion of price at your first meeting?

A. Not in exact dollars and cents. His idea was that if the net worth wasn't too high he might be interested in investing at that figure.

Q. At that time did you know what that figure was?

A. I didn't know at that time what the figure was.

Q. Subsequently did you meet with Mr. Koessler?

A. I checked the net worth and came to Buffalo and
2419 asked him to meet me at the Statler.

Q. This would be some time early in 1955?

A. Early in 1955. Exactly what month, I don't remember.

Q. What was the substance of your—

A. I told him the net worth was approximately \$595,000. He said on that basis he thought that his methods could make the company pay, would the owners be interested. I said, "I don't know, I will have to take it up with them."

Q. Now, during the course of that day did you have rather protracted discussions with him with respect to what your machinery was?

A. I gave him a good idea of what the machinery was at that time.

Q. Now, did you discuss with him at that time the status of your printing contract with King?

A. I told him just about what—I gave him the whole picture.

Q. And the printing contract was terminable in six months?

A. Six months.

Q. And during the course of that meeting he advised you that he was interested in acquiring the stock of the company at the net worth figure you had given him?

A. That is right.

Q. Did Mr. Nicht have any part of any of these
2420 negotiations?

A. No part in the negotiations whatsoever. He arranged for me to Mr. Koessler, and other than that he had no part in the negotiations.

Q. He was not present during the negotiations?

A. No.

Q. Was he advised of the details of the negotiations?

A. In a general way, I felt it was a matter of courtesy, that there was something doing, that Mr. Koessler might buy the company if the stockholders were willing to sell, and I would have to approach the stockholders.

Q. Did he express to you, at the time you informed him of that, any approval or disapproval?

A. I have no recollection of any comment he made whatsoever.

Q. Subsequent to this meeting with Mr. Koessler in Buffalo did you contract the stockholders?

A. I did, not by phone, not by letter, I went directly to their homes.

Q. One of them lived where?

A. The sister lived in Sarasota, Florida; the brother lived in Havana.

Q. And you called on each of them and discussed the proposition?

A. Yes, I called on each and discussed the proposition, and I discussed the proposition in the presence of the
2421 brother's lawyer.

Q. Now, did you at that time know of any other possible purchaser for this company?

A. No, I didn't.

Q. From your knowledge of the industry, did you know of any company in the industry that would have been a possible purchaser?

A. No, I did not.

Q. Did you recommend to the stockholders they accept this proposition?

A. I did.

Q. For what reason?

A. Because I thought it was best for them. We were at a point where we had no working capital, we had made only \$11,000 on an \$8,000,000 business. They wanted money, there was no chance to get it out of dividends. I had in mind the employees, some 250 or 300, who had spent a good part of their lives with me, members of my family who worked there, and myself. I thought the only future for International Color Printing lay in a sale to Greater Buffalo.

Q. Now, did there come a time—strike it out. Were these negotiations you had with Mr. Koessler protracted?

A. The negotiations with Mr. Koessler were not protracted, but the total negotiations before consummation were
2422 protracted some what because I had to travel back and forth to Sarasota and Havana, and I went through an operation at that time, and just prior to the operation I was not able to travel, and immediately after I was not able to travel. So while the time involved was about six months, there were really not very many meetings.

Q. And I take it the stockholders did not agree at first?

A. No, they decided to think it over.

Q. Now, there came a time when the offer was accepted and the stock was sold?

A. That is right.

Q. When was that?

A. June 23rd or 25th, 1955.

Q. And where did that take place?

A. In Buffalo.

Q. Any specific place in Buffalo?

A. I believe it was in the office of a man named Surdam.

Q. Arthur Surdam, the accountant?

A. I think he was a lawyer or tax accountant.

Q. And the stock was acquired for this net worth figure, paid in cash?

A. The stock was actually acquired for about \$20,000 less than the net worth. I can't remember why the difference, except there was a \$35,000 note to be paid to Mrs.—I don't remember whether she was Scofield or Von Lochorst at that time. There was a difference of \$20,000, I can't quite explain that.

Q. Now, you have testified that Mr. Nicht had no part, played no part in those negotiations?

A. No.

Q. At the time this company, International, was acquired by Greater Buffalo, did International have a contract with King other than the six months, the contract that they had been working on that was terminable in six months?

A. There was no contract other than the contract terminable in six months.

Q. And do you know of anything that either King or Mr. Nicht could have done to prevent the sale of International to Greater Buffalo?

A. Mr. Nicht was powerless to prevent the sale of International to Greater Buffalo.

Q. Except by buying it himself?

A. Except by buying it himself.

Q. Hearst had refused to do that?

A. Yes, that is correct.

Q. Now, directing your attention to the matter of a southern plant; when for the first time did you become interested in the development of a southern plant?

2424 A. I don't know the exact year but in the thirties.

Q. And at that time did you make some investigation of it?

A. I was interested primarily at that time in putting up a plant at a port because we could get a reduction of about \$1.00 a ton on newsprint at a port.

Q. Where?

A. A port, p-o-r-t, a seaport. Therefore, I concentrated my investigation in Newport News, Norfolk and Richmond. Richmond isn't a seaport, but it is on the James River, and it was entitled to a seaport rate. I studied buildings in all three places. I studied the transportation costs from those three cities to all the area we were serving. I discussed the matter with union officials, international officer Joseph Orr and business agent Charles Ernst. I came back to Mr. Nicht finally—it was at his importuning I was doing this—I came back and said that we were agreeable to go ahead with the plant in Richmond.

Q. What happened to that?

A. Unfortunately, we could not get the money together. In the meantime, shortly after, Mr. Nicht told me that he had signed new contracts in the south based on the transportation rate from Richmond and, therefore, would expect us to absorb the difference in transportation between Richmond and
2425 Wilkes-Barre to points in the south. It amounted to approximately \$500.00 a week and we did that until the day—or after we sold the plant to Greater Buffalo.

Q. That first investigation came to naught except it cost you some money?

A. That is right.

Q. Now, directing your attention to the period from 1950 to 1955; was there a renewed interest upon the part of King Features in a southern plant?

A. I wouldn't call it renewed, I would say it never subsided on the part of Mr. Nicht. Oh, you mean as against Richmond?

Q. No, no—

A. It never subsided, it was constant, week after week.

Q. And directing your attention to the period from 1950 to 1954; did you have a series of discussions with Mr. Nicht with respect to the erection of a southern plant?

A. I did.

Q. And was the financing of such a plant discussed?

A. There was talk in the Hearst general office about interesting some Boston banker in advancing us a loan, provided we could give a sufficiently satisfactory balance sheet and a sufficient satisfactory prospectus to enable the banker to think, consider the matter was worthwhile. That matter wasn't followed through.

Q. In other words, you never got any loan; and did you point out to Mr. Nicht the difficulties, the impossibility of International financing any such plant?

A. By telephone, verbal conversation, and by letter, I told him over and over again that without a satisfactory contract which would enable us to make a sufficient profit to pay off a loan within a reasonable period of time, we could not commit ourselves to building a plant in the south. I had in mind the burning we got in Richmond.

Q. In other words, you had been burned once in Richmond?

A. Yes.

Q. Let me ask you a flat question. At the time of the acquisition of the stock of International by Greater Buffalo, did International have any commitment of any kind to build a plant in Sylacauga?

A. Never. International never had a commitment of any kind at any time to build a plant in Sylacauga.

Q. Did they have the means to finance the building?

A. Did not have the means.

Q. Was Hearst willing to finance the building?

A. Hearst was not.

Q. You had over this period made certain investigations in Sylacauga?

2427 A. The matter of putting a plant in the deep south came up after we learned that newsprint could be made in the south and newsprint might be obtainable in the south, and this came—the matter of Sylacauga seriously was considered following a visit which I made to the Coosa River Newsprint Company some time in 1954.

Q. Now, when you talked to the Coosa River people in 1954 did you know they had also talked to other printers?

A. At the time, no. I learned later they had.

Q. Among the people they talked to was Mr. Koessler?

A. That is right.

Q. Did you learn that among other people that Coosa had

discussed the matter of a plant in the Sylacauga area was Walter Koessler?

Mr. BERNSTEIN: I object to the question on the grounds the answer obviously would be hearsay.

The WITNESS: It would not be hearsay.

The COURT: Wait a minute——

The WITNESS: Not necessarily.

The COURT: Overruled.

Mr. BERNSTEIN: Could we fix the question to the time in 1954 when he was talking to Coosa River, your Honor,
2428 on the grounds that the witness is apparently testifying from what he had heard on direct examination and basing his information on Mr. Koessler's testimony, not on his information as of 1954 before Greater Buffalo acquired the plant.

The COURT: Mr. Moore, you can fix the time for us.

By Mr. MOORE:

Q. When did you learn that the Coosa River people had discussed the matter of a Sylacauga plant with other printers?

A. Not too long after I visited there. I learned it directly from Mr. Walker——

Q. Mr. Watt.

A. The sales manager of Coosa River.

Q. He is the man you talked to?

A. Yes.

Q. He told you he talked to other printers?

A. Yes.

Q. Did he identify the printers?

A. He identified Walter Koessler and Eastern Color
2429 and others.

Q. In other words, Watt was around looking for a printing plant to use up his paper?

A. That is right.

The COURT: When would that have been that Watt passed that to you?

The WITNESS: Somewhere between the middle of 1954 and the fall of 1954. I don't remember the exact date. I think I was in Sylacauga and I saw them possibly in the spring of 1954.

The COURT: Had Mr. Koessler made a feeler toward you at that time?

The WITNESS Not one word. I never heard a word from Mr. Koessler until the day I met him in New York in December 1954. Never met him, never had any word from him.

By Mr. MOORE:

Q. Now, subsequent to the acquisition of the stock of International by Greater Buffalo, did you, at the direction of Greater Buffalo, make an investigation of the possibility of establishing a southern printing plant for Greater Buffalo?

2430 A. I did.

Q. And among other places, where did you go?

A. I went to Chattanooga, Knoxville, Nashville, Cleveland, Tennessee, and I sent some of our men to Atlanta and other places.

Q. Now, did you make a report to Walter Koessler about this?

A. I made a report that I thought Sylacauga still was the best place.

Q. After your investigation?

A. Yes.

Q. This was when, 1956?

A. I would think so, yes.

Q. And what was Mr. Koessler's recommendation as to the location of a southern printing plant by Greater Buffalo?

A. His idea was that it should be Chattanooga or Nashville, somewhere near the Bullwater. For other reasons I think he deferred to my opinion on that particular occasion.

Q. In other words, it was his idea that the plant should be located near the Bullwater?

A. I think I was influenced somewhat by the fact that I had met the people, they had made some effort to get us down
2431 there, and anyway the choice was made I think against Mr. Koessler's best judgment.

Q. The decision was made by Greater Buffalo to build in Sylacauga?

A. That is right.

Q. Now, how was the construction of the Sylacauga plant financed, do you know?

A. Paid for entirely by Greater Buffalo.

Q. By Greater Buffalo?

A. Yes.

Q. And you, yourself, had nothing to do with the erection of the plant?

A. In the beginning, yes, we had something to do with the erection under their supervision.

Mr. BERNSTEIN: May I have the answer read back?
(Thereupon the last answer was read by reporter.)

By Mr. MOORE:

Q. Well, the plans of the plant were essentially the plans used at Lufkin?

A. Practically a duplication of the Lufkin plant. The press was a duplication of the 5 plate wide press which had been built here in Buffalo. All important details were handled and
2432 improved or endorsed by Greater Buffalo.

Q. Now, directing your attention to the International-King printing contract; did you negotiate the contract between King and International that was entered into in 1955?

A. I did.

Q. And with whom did you negotiate it?

A. Mr. Nicht.

Q. And when was the contract signed by you?

A. Signed by me August 19, 1955, to the best of my recollection.

Q. When was it signed by—

A. —September 1, 1955—

Q. —Mr. Nicht?

A. To the best of my recollection. I received it on September 2nd.

Q. Now, did Mr. Koessler take any part in the negotiation of this contract?

A. Only to the extent that I should do as well as I could.

Q. You had been in the course of negotiating a new contract with Mr. Nicht prior to the time Greater Buffalo acquired the company?

A. That is right.

Q. And did those negotiations continue afterward, after the acquisition?

2433 A. Yes, they continued up to practically the day I signed the contract.

Q. Now, Mr. Bernstein in various of his arguments here has made the statement about the contract containing an escalation clause. Will you state whether or not the contract entered into by International and King in August and September of 1955 had any escalation clause that was any different than the clause you worked under with King for the past many years?

A. The average income received from King per thousand for the week prior to the contract, prior to the effective date of the contract, July 30th, was exactly the same as the average income from King for the next full week, full release, following the effective date of the contract. Now, it so happens that the effective date was July 30th, but the contract was not signed by me until August 19th, and not signed by Mr. Nicht until September 1st, therefore I made a comparison of the income from King for all of our work, overall, per thousand, for a week in October and November with a week earlier in the year, and I find there was no escalation clause and no sweetening of the pot, as Mr. Bernstein claimed.

Q. As a matter of fact, you had always worked on an agreement with King whereby the prices were changed
2434 when you had an increase in labor costs, is that right?

A. That is right.

Q. And the contract with King provided for an increase when there was an increase in newsprint?

A. That is correct.

Q. These same conditions prevailed in the new contract?

A. That is correct.

Q. Basically the terms and conditions of the contract executed in August and September of 1955 were substantially the same terms and conditions of your contract with King over the previous years?

A. That is correct.

Q. There was no sweetening of the pot?

A. There was no sweetening of the pot.

Q. Now, directing your attention to the period beginning July 1, 1955 and continuing to date; will you state what, if any, changes have been made in the facilities of the International plant?

A. Within two or three years following the purchase by Greater Buffalo, with use of their ideas and machinery furnished by them, it became possible for us to put third pages, sixth pages, quarter pages, half pages, on the press separately.

2435 But most of all, and most important of all, their pre-registry system made it possible for us to increase our net production per press hour from approximately 16,000 or a little better, prior to the date of the sale, to 20,200 for the first three months of this year; a gain of 22% in production per press hour.

Q. Without going into detail, you knew of the existence of what you call preregistry?

Q. Did you know how the preregistry was effected?

Q. Did you know how preregistry was effected?

A. I did not.

Q. This was one of the things you had been unable to find out?

A. Yes, correct.

Q. That had been installed at International——

A. ——That is right.

Q. Under the direction of Greater Buffalo?

A. That is right.

Q. Now——

The COURT: Don't the printers know how it works?

The WITNESS: No. They know how it works after Buffalo put the system in, they knew how to use it, they didn't know how to preregister prior to that, no.

2436 The COURT: I wondered how you kept such a thing secret.

The WITNESS: Let me explain——

The COURT: Don't tell me about it, that is a trade secret.

The WITNESS: It is not a flick of the wrist, it is a number of machines.

The COURT: I don't want to know about it.

By Mr. MOORE:

Q. This is a change that takes a great deal of time and work?

A. It is an overall change in the whole stereotype equipment and in the whole press equipment. It is not a flick of the wrist.

Q. Now, you were in court some five years ago when we took testimony concerning the matter of the preliminary injunction in this case?

A. Yes.

Q. And you recall the claim advanced by the Government that the opening of a plant in Sylacauga would result in stripping the plant of International and rendering it into a shell?

A. That is right.

Q. Well, tell us what has happened at International
2437 in the——

A. The average weekly payroll, exclusive of fringe benefits, prior to the sale was \$31,000 per week. The average weekly payroll, exclusive of fringe benefits, for the first three

months of this year was \$49,000. There was an increase in payroll from \$31,000 to \$49,000.

Q. What about production?

A. Production has increased from an average of 23,400,000 sections per week, prior to the sale, to 31,000,000 in the first three months of this year.

Q. Those are comic supplements?

A. Comic supplements and commercials, all four-page orders.

Q. In the meantime, certain runs that were printed by International prior to the opening of Sylacauga have been moved to Sylacauga?

A. That is right.

Q. How much business is that?

A. I think it totals six or seven million four-page sections.

Q. And this has been made up—what makes up for the business?

A. The commercial work primarily. Not that we got that much extra commercial work, Buffalo got a great amount 2438 of commercial work, and in order to take care of it, they ship some of the comic printing to us. We do a considerable amount of commercial work, and right now we are doing Sears, Roebuck and Woolworth.

Q. Your comic supplement printing, the increase in that, comes from Greater Buffalo?

A. That is right.

Q. Your commercial work comes from Greater Buffalo?

A. Greater Buffalo, and in the meantime, I might point out, we lost 7,000,000 due to the closing of newspapers in New York City, which was certainly not our fault.

Q. You are still—

A. We are still far ahead of what we were in 1955.

Q. What happened to the working capital position of the company?

A. From a deficit of approximately \$100,000 prior to the date of sale to Greater Buffalo, the working capital has increased to approximately \$1,400,000.

Q. What has happened to the net worth of the company?

A. The net worth hasn't increased much more than that. All of our net worth is liquid, practically liquid.

Q. In other words, it is up over a million?

A. It is about \$1,500,000.

Q. Now, directing your attention to the present time; do you know how much business Southern Color Printing 2439 is doing?

A. Yes.

Q. How much business are they doing?

A. I would say about \$3,300,000.

Q. How much were they doing in 1955?

A. About \$600,000.

Q. Do you know what happened to the color comic supplement printing of Eastern Color?

A. Eastern Color Printing Company since 1955 has added several single width presses and are now engaged in installing a new \$1,000,000 press completed by Hoe and Company. I got the price of the press directly from Hoe, and that is without installation.

Q. Do you know what has happened to Acme?

A. Acme since 1955 has moved into a new building and added new equipment. If I can go back to Southern Color, I point out that in the meantime the parent company has erected a brand new newspaper building and has purchased a television station for something like \$8,000,000, according to the newspaper reports.

Q. Well, you have been in this industry all your life; can you name one person or one corporation whom, in your opinion, was harmed in any respect by the acquisition of International Color by Greater Buffalo?

Mr. BERNSTEIN: I object.

2440 The COURT: Overruled, I will hear your opinion.

The WITNESS: I can't name any single corporation or individual. I might say that Mr. Hornady, who instigated the investigation in the first place—

Mr. BERNSTEIN: I object to this.

Mr. MOORE: Never mind Mr. Hornady.

The COURT: Tell us about Hornady, how is he doing?

The WITNESS: Mr. Hornady tells me he is doing very well, he is selling more features than ever. He works for two syndicates. He resides in a house on a golf course in Westchester County, he spends half of his time there instead of traveling. He has done very well.

Mr. MOORE: You may ask.

CROSS-EXAMINATION

By Mr. BERNSTEIN:

Q. On Southern Color Printing, you say you know the volume of printing they do now?

A. Yes, sir.

Q. Where did you get that information?

A. Whenever we lose a run I check with the newspapers to find out where it went, and I ask Mr. Smith himself about certain runs, I ask Jack Hornady about certain runs, I ask King Features about runs. So I have a very good general idea of what they are doing, and Hornady and Smith both told me that is approximately the amount they are doing.

Q. Are they your competitors now?

A. Not mine.

Q. Are they International's competitors?

A. No.

Q. Greater Buffalo's competitors?

A. Yes.

Q. Are you in frequent communication with Mr. Hornady?

A. I'm a very friendly man, yes.

Q. You are in frequent communication with him?

A. I meet him at the publishers conventions.

Q. Do you discuss which run you are going to have, which run he is going to have?

A. I talk to him about general conditions, yes.

Q. Now, going into the Hearst organization at the time prior to the acquisition by Greater Buffalo of International stock; did you ever have any dealings with Mr. Berlin or Mr. Gortatowsky?

A. I never met Mr. Berlin.

Q. Do you know what position he had?

2442 A. He is the top man.

Q. What was the position of Mr. Nicht in the Hearst organization?

A. Mr. Nicht was——

Q. In relationship to the top of the organization?

A. Nicht was sales manager of King Features. He was also on the Board of Directors of one of the Hearst corporations.

Q. King Features is a division of Hearst?

A. Yes, he was on the Board of Directors of one of the corporations, I don't know which one.

Q. You don't know which one?

A. No.

Q. Did he have to get the approval of Mr. Gortatowsky or Mr. Berlin or Mr. Greene for any major moves that he would make as far as International was concerned?

A. I think so.

Q. And——

The COURT: What moves are you referring to? What move is that?

Mr. BERNSTEIN: Purchase of the plant, any major arrangement with International.

By Mr. BERNSTEIN:

Q. He did not have the say, as far as that is concerned?

2443 A. Not as far as I know. I know he didn't, he told me many times that he was very disappointed that the people uptown would not approve of his plans to buy the plant.

Q. Now, Mr. Nicht was constantly trying to get—strike that out. Do you know whether or not International was printing the color comic supplements for most of the Hearst newspapers?

A. Not any of the Hearst newspapers.

Q. You were printing—your customer was King, was it not?

A. That is right.

Q. Do you know whether or not King requested International to print for King color comic supplements for most of the Hearst newspapers?

A. I want to take back one thing I said. I said we were not printing for any of the Hearst newspapers. We were printing for the New York Sunday Mirror.

Q. So that am I correct, most of the Hearst newspapers either printed—did they print their own?

A. The Hearst Sunday papers had all of their comics printed in those years in San Francisco and Chicago.

Q. What years?

A. In the years prior to this sale, and they are still having some of them done in San Francisco.

2444 Q. And Mr. Nicht was very anxious to have King Features do that printing, is that correct?

A. That is correct.

Q. Mr. Nicht spoke to you many times about getting that business for King, isn't that correct?

A. Mr. Gortatowsky mentioned it to me frequently, too, that some day he hoped we would print their comics.

Q. When were those occasions you had the conversations with Mr. Gortatowsky?

A. At one time he was the general manager of King Features Syndicate.

Q. And you were dealing with him?

A. No, no, I dealt with Mr. Nicht entirely. If I met Mr. Gortatowsky it was only by accident. I will state one occasion particularly when I met him, it was in Pittsburgh at the installation ceremonial of a new press.

Q. When was that?

A. I don't know.

Q. In any event, at some unspecified time Mr. Gortatowsky, who was a very important official of Hearst, did tell you that he was very anxious to have——

A. He didn't say very anxious.

Q. What did he say?

A. "I hope some day you will be printing our comics."

2445 Q. Who will?

A. Well, International Color Printing.

Q. Will print Hearst comics?

A. Yes.

Q. And did Mr. Nicht do more than just talk about getting King Features to print Hearst comics? Tell us about your visit to the California plant and the survey you made as to whether or not International could use the California equipment?

A. That is right, I did.

Q. Tell us about that?

A. That is all I can tell you. I made a survey, I don't recall the result.

Q. Let's look at some of the memoranda you made at the time.

A. All right.

Mr. BERNSTEIN: Could we have this marked for identification?

The COURT: Go ahead, we will mark it later. Give us the date of it, refer to that.

By Mr. BERNSTEIN:

Q. Look at Document Number 236, August 3, 1953, which is headed "Memorandum——", can you read that?

2446 A. "Memorandum on San Francisco and Chicago color plants."

Q. Would you glance at that memorandum and then tell us if you can identify it, whether or not you prepared that?

A. (Witness examines document.)

Q. Having read the first page, are you able to tell us whether you prepared that, without reading the rest of the document?

A. Yes, sir.

(Thereupon memorandum referred to was marked Plaintiff's Exhibit P-103 for identification.)

Mr. BERNSTEIN: I will offer it in evidence.

The COURT: Any objection?

Mr. MOORE: We haven't seen it.

Mr. BERNSTEIN: I will offer it later.

By Mr. BERNSTEIN:

Q. Do you recall that in August 1953 you met in New York with Mr. Nicht, Mr. Burns and Mr. Pedulla, the business manager of the American Weekly; do you recall that occasion?

A. No, I do not.

2447 Q. Well, isn't it a fact that you did meet with them to obtain American Weekly's prices for printing Portland, Oregon comics?

A. You asked me if I met with them, and I don't recall meeting with them and, therefore, I don't recall what we talked about.

Q. Do you recall that you did make a visit to the Hearst San Francisco plant?

A. I did.

Q. And what was the purpose of that visit?

A. To find out what kind of equipment they had.

Q. For what purpose?

A. For my own knowledge primarily, and to find out what it might be costing them to do their job.

Q. Did you then prepare this memorandum after your visit?

A. The memorandum you showed me, yes.

Mr. BERNSTEIN: I offer it in evidence, your Honor.

Mr. MOORE: May I see it?

(Thereupon documents were marked Plaintiff's Exhibits P-104, P-105 and P-106 for identification.)

Mr. MOORE: I have no objection.

Mr. BERNSTEIN: May P-103 be received in evidence,
2448 your Honor?

The COURT: Yes.

(Thereupon Plaintiff's Exhibit P-103, previously marked for identification, was received and marked in evidence.)

By Mr. BERNSTEIN:

Q. I show you P-104 for identification, a paper which appears to be a memorandum to J. J. G., dated September 29, 1954, and I ask you if you can please tell us what that document is?

A. Well, it looks to me like a memorandum from Joe Clinton to me, in which he got together the circulation of Hearst newspapers and then tried to work out some sort of a summary.

Mr. BERNSTEIN: I offer P-104 in evidence.

Mr. MOORE: I don't see the relevance, but I have no objection.

The COURT: You have no objection?

Mr. MOORE: No.

The COURT: Received.

2449 (Thereupon Plaintiff's Exhibit P-104, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: P-105 marked for identification is a letter from Joseph J. Gorman to Mr. Koessler, Greater Buffalo Press, dated November 20, 1959, and I offer that in evidence.

Mr. MOORE: No objection.

(Thereupon Plaintiff's Exhibit P-105, previously marked for identification, was received and marked in evidence.)

Mr. STEVENS: Would you mind showing these things to me? I realize we are only passengers here, but we would like to see the documents.

Mr. BERNSTEIN: P-106 for identification is a copy of a letter dated March 16, 1953, from Mr. Joseph J. Gorman to Mr. Frank Nicht—

The COURT: Have you a number of things you are going to offer?

Mr. BERNSTEIN: That is all right now.

2450 The COURT: I was going to say offer them. I have to take an arraignment at twelve-thirty, and will you alert them out there that we will get started now. Go ahead.

Mr. MOORE: No objection.

Mr. STEVENS: Objection.

The COURT: Have you offered those?

Mr. BERNSTEIN: I offer them in evidence.

Mr. MOORE: I have no objection.

Mr. STEVENS: We object. We haven't seen them, we don't know what they are.

The COURT: I want you to see them, that is the point I made. Give them to Mr. Stevens. We will now recess until one-thirty, if that suits you. I have a matter here that I am going to take care of.

(Thereupon the Court was in recess at 12:30 P.M.)

2451 (Proceedings resumed, pursuant to recess, commencing at 1:30 P.M.)

JOSEPH J. GORMAN, having been previously duly sworn, resumed and testified further as follows:

Mr. BERNSTEIN: To save time, Your Honor, I offer P-103, 104, 105 and 106 in evidence, as against the Greater Buffalo Press and offer them against NEA subject to connection at the end of the case.

Mr. MOORE: No objection.

Mr. STEVENS: On that basis we have no objection for NEA. (Thereupon Plaintiff's Exhibits P-103 through 106, previously marked for identification, were received and marked in evidence.)

By Mr. BERNSTEIN:

Q. Mr. Gorman, have you had a chance to glance at P-103, 104, 105 and 106?

A. Just fairly glance at them.

Q. They are memoranda—well, take P-106; P-106 is
2452 a letter that you wrote, a report that you gave to Mr. Nicht, is that correct?

A. Yes, sir.

Q. And that was about March—when was it, my date isn't clear?

A. Sixteenth.

Q. 1953?

A. Yes.

Q. Isn't it a fact that you met with Johnny Pedulla and Oscar Bondy a few weeks prior to that report?

A. According to this letter I did. I don't recall meeting them.

Q. Do you know now who Johnny Pedulla and Oscar Bondy is?

A. Oscar Bondy is dead. At that time he was production manager for the Hearst color press in Chicago and San Fran-

cisco. Johnny Pedulla at that time was business manager for the American Weekly, and he is now the manager of the newspaper in Erie, Pennsylvania.

Q. Did the American Weekly have any connection with Hearst at that time?

A. The American Weekly is owned by Hearst.

Q. And was the purpose of your meeting to check on the possibility of adapting the Chicago presses for the kind of work International was then doing for King?

A. One of the purposes, yes.

2453 Q. Was one of the purposes to estimate the cost of printing Hearst's own supplement in the San Francisco plant?

A. Yes, sir.

Q. Was another one of the purposes for estimating the cost of printing Hearst's supplements on present Hearst presses in buildings located in the city where a cheaper labor rate could be obtained?

A. Yes.

Q. Was another purpose to estimate the cost of printing Hearst supplements and other supplements on rebuilt presses in a building located in a city where a cheaper labor rate might be obtained?

A. Yes, sir.

Q. Was the purpose at that time—or did you have under consideration at that time International using those presses to do the printing for King?

A. No, sir.

Q. I invite your attention to page three, the last paragraph—no, page four, the last paragraph. You say: "At an earlier date I agreed to estimate the cost of printing Hearst's own supplements, also other supplements in the San Francisco plant. I have not done so because it would be a waste of time. This company or any other company would have the same contract as Hearst with the various unions. We would have to add our profit and King Features would have to add a profit. I do not think we could print in the San Francisco plant much cheaper than Hearst is now doing. I have full confidence in the efficiency in the Hearst production staff now handling the San Francisco plant." When you talk about "we" were you talking about International?

A. Talking about me.

Q. What was under consideration then?

A. Nothing to do with International, except that I was acting as an emissary for Mr. Nicht to go and find out what I could about the Hearst operation.

Q. For what purpose?

A. Because he was thinking about the—hoping to be able to take the plant over, have Hearst run it, or do all of those four things you were talking about. You just outlined the purposes.

Q. He was giving serious consideration to getting the Hearst business?

Mr. MOORE: By "he" you mean Nicht?

Mr. BERNSTEIN: Nicht.

The WITNESS: Getting Hearst's additional business for what, for who?

2455 By Mr. BERNSTEIN:

Q. For King?

A. What he had in mind doing was to operate the Hearst plant and King get the profit.

Q. Yes.

A. Take the profit out of the Hearst organization and give it to King, and King would give it back to Hearst again. It was strictly a silly idea.

Q. And you told him you didn't think it was profitable to do it that way?

A. I didn't think it was profitable.

Q. On P-103, August 3, 1953, you wrote another memorandum on this subject, is that correct?

A. Yes, sir.

Q. How much time did you spend in all on this project?

A. A ridiculously small amount of time for the job involved; one day on each press.

Q. You went to Chicago and San Francisco?

A. That is right.

Q. And who paid those expenses?

A. International Color Printing.

Q. You were then running the International plant?

A. That is right.

Q. You are still running it?

A. That is right.

2456 Q. You are in full charge of it?

A. That is right.

Q. You always have been?

A. Yes.

Q. When we talk about any printing at International, we mean printing that you supervised, controlled and managed?

A. Yes, sir.

Q. Now, P-104 is a memorandum to you from Mr. Clinton. Who is Mr. Clinton?

A. He was an assistant production manager in Wilkes-Barre at that time. He is now manager for the Sylacauga plant.

Q. And do you have any current supervision over the Sylacauga plant?

A. No connection whatsoever.

Q. When was the last time you were there?

A. I was there on a visit about a year ago, maybe less than a year ago, to visit his home, prior to the confirmation—or the graduation of his daughter and the confirmation of his son for whom I was sponsor.

Mr. BERNSTEIN: In the event there might be some confusion in the record; might the record show that P-103, 2457 104, 105 and 106 are in evidence against Greater Buffalo and are in evidence against NEA only if the Court later finds there was a conspiracy involved.

Mr. STEVENS: I should add——

Mr. MOORE: Reminded me—really those documents should only be admissible against NEA if there is found to have been a conspiracy involving NEA and those are in furtherance of the conspiracy, not just per se.

The COURT: I suppose you are offering them as some possible proof of a conspiracy are you?

Mr. BERNSTEIN: In P-106, dated March 16, 1953, Mr. Gorman states to Mr. Nicht on page two: "Because I think I can give you the information with fewer words this way, I am going to use the question and answer form. It is easier for me that way and I hope you will bear with me." "What is the present equipment in San Francisco?" Then you describe four six deck

2458 Hoe color presses geared for at least 36,000 per hour and running at 32,000 per hour and then there is another sentence and you ask this question: "Are the Hearst presses in Chicago and San Francisco readily adaptable for our type of printing?" "No, they are not, for the reason that we require four clips on the inside of each cylinder to take care of half plates; we require an alternating delivery and folder so double plating will be avoided; we require that the

sheets be split at roll to give flexibility of roll width; and finally we require that the two top decks be separated from the bottom four to allow us to print five page standards; sixteen page tabloids, et cetera."

By Mr. BERNSTEIN:

Q. Isn't it a fact at that time International's plant required four clips on the inside of each cylinder to take care of half plates?

A. Yes.

2459 Q. When you say "we require" you were talking about International?

A. Yes.

Q. Then——

A. That did not mean we were going to run the Chicago plant.

Q. You were talking about International's ability vis-a-vis the adaptability of the San Francisco and the Chicago plants to use the same kind of equipment and same process, is that correct?

A. Yes.

Q. Do you recall now what Mr. Nicht asked you to go out there to do? Is it just in this memorandum?

A. Doesn't it state it in the memorandum?

Q. The memorandum speaks for itself, that is, that has the full transaction?

A. Yes.

Q. On page four you ask this question: "Has our machinist examined Chicago presses as promised?" The answer is: "Yes, and he believes that the job of separating the two top decks from the bottom four would be practically impossible to accomplish. I guess it wouldn't be impossible, but the cost would be tremendous." Did you send anybody else out to Chicago, to the Chicago plant, except that machinist?

2460 A. I don't recall sending him. Apparently I did, but I don't recall.

Q. Now, this was before Greater Buffalo purchased the stock of International, and there you were visiting the Hearst plant and, I believe you testified in answer to Mr. Moore's question, that during that same period of time prior to Greater Buffalo's acquisition of International you visited the plants of every one of your other competitors, is that correct?

A. I didn't say that, I said during the forty years that I was in business.

Q. Let's narrow it down; how about during the period prior to 1955, June 16th?

A. My memory isn't that good, I haven't any idea of what plants I visited in that period.

Q. You do remember that in 1933 you visited the Greater Buffalo plant clandestinely?

A. When you get into the Greater Buffalo plant it is something you never forget. That was approximately 1933.

Q. 1933?

A. Approximately. It might have been 1934, 1935; in the thirties.

Q. Were you there again before December 1954?

2461 A. I was in the Grote Street plant before December, 1954.

Q. And after 1933?

A. Yes, somewhere in the forties.

Q. Somewhere in the forties?

A. Yes.

Q. And what was the purpose of your visit?

A. Well, sometimes they call me Sneaky Joe.

Q. Are you?

A. Sometimes.

Q. You are a sneak?

A. I sneak in, yes.

Q. Are you a sneak?

A. No, I'm not a sneak.

Q. Did you intend to sneak at that time?

A. No, I walked in directly.

Q. What was the purpose of your visit to that plant?

A. To find out what I could about how a better printer operated.

Q. Why didn't you ask Mr. Koessler if you could go through it?

A. Mr. Koessler had the reputation of being a rugged individual who would have thrown me out.

Q. Why?

A. Ask him.

Q. I ask you?

2462 A. Because he didn't want somebody learning the secrets that he had built up over a period of years, and I don't blame him.

Q. Were you a competitor of his at the time?

A. No, King was, I was working for King. I was a competitor, production-wise.

Q. He was afraid, you feared, that competitive information might be available to King Features through you, is that correct?

A. Put that again. You mixed up your sentence.

(Thereupon the last question was read by reporter.)

The WITNESS: No, I don't make any sense out of that.

Mr. BERNSTEIN: You don't understand the question?

Mr. RAICHEL: Neither do I.

The COURT: You were down to get the information for King?

The WITNESS: I was there to get the information for myself.

The COURT: Wasn't it true that this man Nicht was hounding you because you couldn't get the stuff out like Greater

2463 Buffalo?

The WITNESS: I was down to get the information for myself as to how to improve flexibility so that he would stop hounding me.

The COURT: That was your mission?

The WITNESS: Yes.

By Mr. BERNSTEIN:

Q. You referred to P-23 in evidence, which is the contract between International and King that you had negotiated, is that correct?

A. Yes, sir.

Q. And you stated that you signed that contract on what date?

A. August 19th.

Q. I invite your attention to Schedule A of that contract, which is the rate schedule——

A. Yes, sir.

Q. —That is part of the contract that specifies the prices, isn't it?

A. Yes, sir.

Q. That is dated June 16, 1955?

A. May I read the first paragraph?

Q. All right.

2464 A. It is dated June 16, 1955——

Q. Is that correct?

A. The first paragraph reads: "In accordance with the provisions of Paragraph Seventh, Subdivision A, to agreement between King Features Syndicate and International Color Printing Company dated the thirtieth day of July, 1955, the following rates shall apply for each 1,000 four-page standard size supplements", in other words, the date the contract became effective was July 30, 1955, and not June 16, 1955.

Q. Are you a lawyer, Mr. Gorman?

A. You know I'm not.

Q. And on the first page of P-23, the second paragraph, you say to Mr. Nicht: "I would like to point out that in Section A of Article 7, Exhibit A is referred to as being dated June 16, 1955." Why was the date June 16, 1955 selected?

A. I have no idea.

Q. Well, isn't it a fact that you had negotiated the amounts of the rates with Mr. Nicht on or before June 16, 1955?

A. I don't know anything about June 16th, why the date got on there, I don't know. I will tell you what I think it means.

Q. I don't want to hear that. We will be able to
2465 determine the legal effect of this document. I want to know from you how long your negotiations with Mr. Nicht over the rate schedule had occurred that ultimately led to the August 19, 1955 agreement?

A. Probably six months, or longer.

Q. And did there come a time when you had reached a tentative understanding as to what the rates would be?

A. Yes, sir.

Q. During that period of time?

A. Yes, sir.

Q. Was that prior to the signed portion of the agreement, August 19, 1955?

A. Yes.

Mr. BERNSTEIN: I offer.

The WITNESS: May I add——

Mr. BERNSTEIN: Just a minute, you will have opportunity for re-direct. There is no pending question.

The COURT: Is that part of the answer that you feel you must make?

The WITNESS: Yes, sir. There were further changes after June—after July 30th.

The COURT: Did you offer something in evidence?

Mr. BERNSTEIN: I offer P-4 in evidence. P-4 is the 2466 agreement dated April 28, 1955, between International Color and King Features Syndicate.

Mr. MOORE: I have no objection.

Mr. BERNSTEIN: It is offered against NEA subject in connection.

The COURT: Received.

Mr. STEVENS: We object.

(Thereupon Plaintiff's Exhibit P-4, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: I offer P-7 in evidence. It is a letter signed by Mr. Gorman, to King Features Syndicate, dated June 2, 1940.

Mr. MOORE: I have no objection.

Mr. BERNSTEIN: It is offered against NEA subject in connection.

Mr. STEVENS: We object.

The COURT: Received.

(Thereupon Plaintiff's Exhibit P-7, previously marked for identification, was received and marked in evidence.)

2467 Mr. BERNSTEIN: May the record show that P-4 is in evidence, your Honor?

The COURT: Yes. What is that 1940 document?

Mr. BERNSTEIN: The witness testified on direct examination as to the content of his agreements with King over the years and what the terms were, when they expired. He was relying on his recollection, and I believe the best evidence rule is to go to the documents in evidence, and Exhibits P-2 through P-6. P-2 is the original agreement between King and International dated September 4, 1930, and all the other documents are extensions of the agreements.

The WITNESS: Pardon me—

Mr. BERNSTEIN: There is no pending question, Mr. Gorman.

Mr. RAICHLE: He wanted to correct some misapprehension you were making. Don't you welcome that?

The WITNESS I think there was an earlier agreement than that.

2468 The COURT: What was the area you are talking about

The WITNESS: He said the agreement, the first agreement was in 1930. I think there was an earlier one than that.

Mr. BERNSTEIN: I offer P-53 for identification in evidence as against Greater Buffalo and against NEA subject to later connection. It is a document dated May 26, 1954, signed by Mr. Gorman, and it is a report on the possibilities of a color printing plant in or near Birmingham.

Mr STEVENS: Objection.

Mr. BERNSTEIN: It has been identified, not received in evidence. It is not marked in evidence.

The COURT: You are offering it in evidence?

Mr. MOORE: We have no objection.

Mr. STEVENS: We object.

The COURT: Received.

(Thereupon Plaintiff's Exhibit P-53, previously marked for identification, was received and marked in evidence.)

2469 By Mr. BERNSTEIN:

Q. The last paragraph of P-53 in evidence, Mr. Gorman, states: "It may be that the owners of ICP——"—which is an abbreviation for International Color Press— "—will not be interested in a southeastern proposition, but I am convinced that something will have to be done to guard our southern flank against any encroachment by Lufkin." What southern flank were you referring to?

A. The western part of the deep south.

Q. And were you concerned that the Lufkin plant contemplated by Greater Buffalo would take business away from you in that area?

A. I was concerned they would take it away from King Features.

Q. And if they took it away from King, King wouldn't be able to put it in Wilkes-Barre?

A. I presume so, if they took it.

Q. Wilkes-Barre would lose revenue?

A. Yes.

Q. So you were concerned about competition from the Lufkin plant, is that correct?

A. I was concerned about King Features competition from the Lufkin plant.

2470 Q. Regardless, you, Joseph J. Gorman, were concerned about competition from the Lufkin plant, is that correct?

A. I said King Features was concerned, therefore I was.

Q. King Features is an inanimate object——

A. Never to me.

Q. Was Joseph J. Gorman interested in competition from the Lufkin plant?

A. No.

Mr. MOORE: I object to the question on the grounds it is argumentative. It has been answered three times. Counsel can make his argument about competition in a brief.

The COURT: I think he definitely outlined his concern, he would be out of business. He had only a few scraps of other things, it was life or death.

Mr. BERNSTEIN: The only reason I press the question is that this witness has stated categorically, as an expert, they were not in competition. I am trying to demonstrate that that is a conclusion, that he has no basis for it, he will not——

2471 The COURT: He is a printer, his principal is a competitor, and without his principal being successful, he is not successful.

Mr. BERNSTEIN: Nonetheless the witness was asked whether he, personally, as an individual, gave consideration to that. He is evading the answer to that question. For that reason I press it.

Mr. MOORE: I object to the characterization that he is evading the answer. He answered it twice. Counsel doesn't like his answer. Counsel is testifying as to his expertise as to what competition is. I suggest he put it in a brief and stop arguing with the witness.

The COURT: It seems to me we are just parrying back and forth. This man, who is not a lawyer, although that may be an advantage, has told you the best version he has of his concern all the way down the line. It seems to me this is argument you are going to make as to what was truly the picture from your point of view. Let's go on with another question.

Mr. BERNSTEIN: I offer P-56 in evidence. P-56 for identification is a contract between the Coosa River Newsprint Company and Hearst Enterprises, dated December 8, 1954. It is offered as against Greater Buffalo, and subject to connection as against NEA.

Mr. MOORE: I don't see a connection with Greater Buffalo. It is a contract Hearst made with Coosa. The state of the record

and the fact is that Hearst never assigned the contract to International, never assigned it to Greater Buffalo, it has never been used for anything, and the uncontradicted state of the record and the uncontradictable fact is that Sylacauga gets its paper from Coosa under an entirely different contract. I don't see where that has any bearing at all.

2473 The COURT: What is your point?

Mr. BERNSTEIN: The witness has been testifying very generally all about Mr. Watt and the contract and telling us what is in the contract, it's different from the other contract. Here is the contract in evidence, which is the best evidence. An objection is being made to it——

The COURT: He didn't make that contract. That is King making it with Coosa.

Mr. BERNSTEIN: I will withdraw the offer at the moment and develop it further, your Honor.

The COURT: You claim that he was acting as an agent for King?

Mr. BERNSTEIN: I claim that Mr. Gorman knew about the transaction, discussed it with Mr. Nicht, discussed it with Mr. Watt, knows all about it. We will develop it through his testimony.

The COURT: I don't think there is any question that he had an interest, as indeed apparently Nicht expressed an interest, in someday having this other plant. Apparently he contracted for the paper years before he put the plant up. He has got to get that nailed down, I suppose, subject to the plant being built.

Mr. BERNSTEIN: The Government proposes to develop through the testimony of this witness that not only did they have that nailed down, they had a lot of other things nailed down, and we will develop that through the testimony of this witness, and that is the purpose of this line of inquiry. I thought we could save time by offering these documents in evidence, but we will go through it line by line, paragraph by paragraph, and we will do it the long way.

Mr. MOORE: I am going to withdraw my objection to this. I am going to wait with great interest while you develop what you represented to the Court that you are going to develop.

You go ahead, Mr. Bernstein, my objection is withdrawn.

2475 Mr. BERNSTEIN: Thank you.

Mr. STEVENS: May we have an objection for NEA?

Mr. RAICHLE: You don't claim anybody performed under that contract, do you?

Mr. BERNSTEIN: We will find out what the facts are.

Mr. RAICHLE: What do you claim about it?

Mr. BERNSTEIN: Let's find out from the witness.

(Thereupon Plaintiff's Exhibit P-56, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: P-55 for identification, your Honor, is a letter from the Coosa River Newsprint Company to Mr. J. J. Gorman.

By. Mr. BERNSTEIN:

Q. I show you that letter, Mr. Gorman, and ask you if that is a copy that you received from Coosa River?

A. I presume so.

Mr. BERNSTEIN: I offer it in evidence, your Honor.

Mr. STEVENS: Objection on behalf of NEA.

Mr. MOORE: No objection.

2476 The COURT: I will receive it subject to the same ruling, that it is connected up.

(Thereupon Plaintiff's Exhibit P-55, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: Now, I will accept Mr. Moore's challenge.

By Mr. BERNSTEIN:

Q. Dated September 22, 1954: "Dear Joe: As requested in our telephone conversation this morning, I confirm my August 30 discussion with you and Mr. Nicht in New York as follows: In the event you should decide to build a comic printing plant in the southeast, we would undertake to supply you with the newsprint requirements for such plant commencing in 1956, up to a maximum annual tonnage to be determined, with the understanding that your newsprint requirements of that plant would be purchased from us exclusively up to the maximum amount of tonnage we agreed to supply. Our paper would be supplied at our regular contract price and terms, the arrangement to be covered by a long-term contract either with

2477 Hearst Enterprises, Inc., or if with International Color Printing Company, to be guaranteed either by Hearst Enterprises, Inc. or King Features. We would enter into this arrangement with the understanding that you would be permitted to truck the newsprint from our plant should you so

elect, in which case we would allow the published carload freight rate or trucking rate to destination, whichever was lower." Was the plant that International then had under consideration located adjacent to the Coosa River Newsprint Company?

A. We had no plant under consideration until we could get a contract from King.

Q. When I say "under consideration" I mean that you were discussing this with King, were you not?

A. We were discussing our contract with King.

Q. And you were discussing a plant in Sylacauga?

A. Not in Sylacauga. We discussed a plant in Anniston and Talladega, Childersburg, Coosa River, Coosa Pines, Sylacauga, and other places. Always we emphasized that we would not sign a contract for newsprint, we would not sign a contract for a building, we would do nothing to commit ourselves to go ahead until we had the contract we demanded.

Q. With whom?

A. The contract with King that we demanded and required.

2478 Q. A long-term contract for the printing business?

A. For a satisfactory price to enable us to borrow enough money to go ahead with the building and pay the owners a dividend, etcetera.

Q. Joseph J. Gorman went ahead with those plans after he did receive a long-term contract from King for printing within International?

A. I did not go ahead with this plan.

Q. Do you know Mr. Jack Nealeans?

A. Yes, sir.

Q. Who is he?

A. At one time secretary of the Chamber of Commerce of Sylacauga.

Q. Is that where the plant was ultimately located, in Sylacauga?

A. Yes.

Q. How far was the plant located from the Coosa River Newsprint Company?

A. Fifteen miles.

Q. And when Mr. Watts says to you, he is talking about an understanding that you, Mr. J. J. Gorman, of International

Color Printing Company, would be permitted to truck the newsprint from the Coosa River Plant, if you elect, and in that case he would allow the published carload freight rate or 2479 trucking rate to destination, whichever was lower, what did that mean to you?

A. It meant he was trying to sell some paper to a prospect, somebody who might possibly put in a plant. He was very foolish if he thought he was going to succeed because he knew, as well as I knew, and everybody else knew, we were in no position to put a plant in Sylacauga or anyplace else under the then circumstances, with a deficit of \$100,000.

Q. Did he know your deficit?

A. He knew we didn't have a contract with King.

The COURT: At least he knew he was going to deal directly with International, he was going to have an underwriter. In other words, he was——

Mr. BERNSTEIN: That is correct.

The COURT: I don't see anything peculiar about it.

Mr. BERNSTEIN: I don't see anything peculiar about it either, but I wanted the facts to be in the record.

The COURT: All right.

Mr. BERNSTEIN: The facts, as I stated them to the Court.

2480

By Mr. BERNSTEIN:

Q. Now, what did this sentence that I have just read mean to you insofar as pricing, that sentence that says: "We would enter into this arrangement with the understanding that you would be permitted to truck the newsprint from our plant should you so elect, in which case we would allow the published carload freight rate or trucking rate to destination, whichever was lower."?

A. If we put a plant in Sylacauga, they would give us the benefit of hauling it ourselves.

Q. And then the letter says: "From our various conversations——", do you remember having various conversations with him about the newsprint?

A. There were——

Q. Do you remember, that is the question, yes or no?

A. Yes.

Q. You remember clearly?

A. Yes.

Q. What do you remember about the conversation with Watts, when did they take place?

A. I don't remember where they took place or when they took place, but I remember in the beginning——

Q. Do you remember when they took place?

A. —— He asked me——

2481 Q. Do you remember when?

A. No.

Q. Do you know whether they took place on or about September 22nd?

A. I don't.

Q. You don't know whether it was in 1960?

A. Certainly, I know it was before 1960.

Q. Before when?

A. It was somewhere about 1956.

Q. Then you are talking about conversations after——

A. 1954, he offered me the paper for \$120.00 a ton——

Q. ——Is this——

A. I am going to give you the story, do you want it?

Q. Is this prior to the time that Greater Buffalo bought the stock?

A. Yes, prior to the time.

Q. Go ahead.

A. He said, "I'll sell you the paper for \$119.00 a ton and we will build a plant on our plot." They had a meeting of the Board of Directors and then I had a letter from him and he said: "I'm sorry, the Board of Directors can't sell for less than the market price, \$127.00 a ton, and we will not build a plant on our plot."

Q. Later on you negotiated with the Sylacauga Chamber of Commerce for the——

2482

A. I was negotiating with them right along.

Q. ——To give you some land?

A. Yes.

Q. Now, continue reading the letter: "From our various conversations and from the data you have given us, we understand that your initial requirements would be in the neighborhood of 8,000 to 10,000 tons annually. This offer is subject to your proposed printing plant being located in or near Childersburg or Birmingham, Alabama. We will hold this offer open for a reasonable length of time but would like fairly prompt acceptance or rejection so as to enable us to make other plans for

disposal of the tonnage in the event you should decide not to go ahead." Do you know anything about the contract of Coosa River Newsprint Company signed with Hearst Enterprises, Inc. in December of 1954 following—

A. They didn't sign with us, they signed with Hearst. What they were doing with the paper was their business.

Q. Did you discuss it with Mr. Watt?

A. Yes.

Q. Did you discuss the Coosa River Newsprint Company's newsprint contract with Hearst with Mr. Watt?

A. He told me he would sign with Hearst, not us.

2483 Q. What was the basis for his telling you that?

A. We had no contract, we had no business. We—suppose we put a plant there and only had a six month contract, we would have no newspaper to use it up.

Q. Did you ask Mr. Watt to enter into a contract with International?

A. No. Watt decided on his own that he wanted to have no part of me.

Mr. BERNSTEIN: Please mark for identification document number 153(a).

(Thereupon document referred to was marked Plaintiff's Exhibit P-107 for identification.)

Mr. BERNSTEIN: It is offered in evidence, Your Honor.

Mr. STEVENS: It is in relation to this same contract. I believe we have checked on behalf of NEA.

The COURT: Same objection?

Mr. STEVENS: Yes.

The COURT: Same ruling.

Mr. MOORE: On this I think we do have an objection.
2484 I let the Coosa contract with Hearst go in. This is a contract between Hearst and Coosa evidently executed November 14, 1955, and I know nothing about it.

Mr. BERNSTEIN: If the court please, this document—

Mr. MOORE: Are you going to identify it or is the witness?

Mr. BERNSTEIN: Do you doubt the authenticity?

Mr. MOORE: I've never seen it before.

Mr. BERNSTEIN: Document 153, this is the document—

Mr. MOORE: This document has never been given to me by anybody.

Mr. FELDMAN: That came with the group.

The COURT: Gentlemen, why don't you hold that? See if you can refresh Mr. Moore's recollection of it at all. Show it to Mr. Gorman and see if he knows anything about it. I don't want to dilly dally around for one letter. Ask Mr. Gorman. I don't want him to have to come back again. Ask him if he knows anything about the letter.

By Mr. BERNSTEIN:

Q. Do you know anything about an extension of the
2485 Coosa River contract with Hearst that you talked about, which says: "The term of this contract shall be the period beginning January 1, 1956 and ending December 31, 1969.", and then this document refers to an extension of the term of the December 1954 contract, extending the term beginning with the period of January 1, 1956, and ending December 31, 1969, do you know anything about that?

A. No, sir.

The COURT: What you will have to do is thresh that out with Mr. Moore. Let's go on with Mr. Gorman. How much more time are you going to spend with him do you think?

Mr. BERNSTEIN: I think we have another hour, Your Honor.

The COURT: Where do you live, Mr. Gorman?

The WITNESS: Wilkes-Barre. I have no objection to spending a little more time in Buffalo.

The COURT: I am. I am getting tired. I want a full examination of you, it is important, but we are going to have to continue this lawsuit. We have arranged to come back the twelfth
2456 of July. I don't want you to come back if it isn't necessary. We will go on for a while. I don't see why we need an hour with Mr. Gorman.

Mr. BERNSTEIN: I will try and rush it along, your Honor.

The COURT: Now, other than peeling out each exhibit one by one and having these lawyers look them over, particularly Mr. Stevens who apparently isn't widely acquainted with some of these papers, it seems to me the thing to do would be to make a bundle of these, sit down, and let them see them, and make an offer of proof.

Mr. BERNSTEIN: I will try to expedite it.

The COURT: You know, the lawyers don't know what you are going to peel off. They can sit with you for ten or fifteen minutes maybe and agree on everything, subject to certain objections.

Mr. BERNSTEIN: We will do that.

2487 The COURT: You can ask Mr. Gorman, if you want to, specific questions from those documents.

Mr. BERNSTEIN: I offer P-57 in evidence as against Greater Buffalo, subject to connection as against NEA.

Mr. MOORE: No objection.

Mr. STEVENS: Objection on behalf of NEA.

The COURT: Same ruling, received.

(Thereupon Plaintiff's Exhibit P-57, previously marked for identification, was received and marked in evidence.)

By Mr. BERNSTEIN:

Q. Do you know who the stockholders of Coosa River Newsprint are?

A. Kimberly-Clark, I believe.

Q. At that time were any Scripps-Howard newspapers involved?

A. A number of newspapers, who they were I don't know.

Q. Did you have any discussion with Mr. Watt of Coosa River Newsprint Company in or about 1955, or with anyone else, that lead you to believe that Coosa River Newsprint
2488 Company was a joint venture between a number of southern newspapers that were buying newsprint from that plant and Kimberly-Clark?

A. In 1954 I knew that.

Q. That was the situation?

A. Yes.

Q. Mr. Gorman, I read to you your testimony in the proceedings of October 25, 1961, page 54, you were asked these questions by Mr. Moore—on page 53 it shows that you were under direct examination by Mr. Moore—on page 54 you were asked this question: "Reverting back to International Color Printing Company prior to 1955 when it was owned by the Govin family, were dividends paid over the 25 or 30 years that the Govins owned this business—" strike that out. I intended to read page 53, line 23, this is a question by Mr. Moore to you: "Now, I think you have stated from time to time, have you not, in various conversations with unions and other people that Greater Buffalo was a competitor?" Answer: "Yes, sir." "Q. What do you mean by competition in that sense?" Answer: "I meant we were competitors production-wise, so that I could supply King Features, so that I could supply them with a price

which would enable them to compete with other plants, including the Greater Buffalo." Is that correct?

2489 A. I said that, yes.

Q. Now, with respect to your conversations with Mr. Nicht concerning the contract with King Features, I show you P-58 in evidence, your letter to Mr. Nicht, in which you say: "Dear Frank: I am enclosing the first form of a contract to cover International Color Printing Company printings for King Features Syndicate which I think should be for a period of ten years. This form makes no reference whatever to the southern plant but I think you will be perfectly willing to agree that when a southern plant is established by us the following should hold true: Sternberger will sell paper to us under the same terms for which he buys from Coosa River and to help us make up the increased cost of running an additional plant, whatever saving will result from hauling paper in our own trucks will be ours. Also, to help in the establishment of plant and to offset overhead part of the transportation saving will accrue to International Color Printing Company." Were you then referring to the fact that P-56 in evidence, the contract with Coosa River Newsprint Company, dated December 8, 1954, and signed by Mr. Sternberger as president of Hearst Enterprises, was going to get that transportation allowance that you discussed before and that you contemplated

2490 that in the event that plant was built that International would get the benefit of that allowance?

A. If they went ahead with the plant.

Q. If International went ahead with the plant you contemplated that International would get the benefit of that trucking allowance, is that correct?

A. Right.

Q. Is that correct?

A. Right.

Q. That was on December 30, 1954, before Greater Buffalo acquired the stock of International, is that correct?

A. That is correct. May I read the last paragraph?

Q. I will read the rest of the letter: "This particularly holds true to the amount which we are now absorbing due to a theoretical Richmond plant." You testified earlier that you were absorbing a phantom freight as if the newspapers, the supplements, were shipped from Richmond, is that correct?

A. That is right.

Q. "I realize fully unless the cost is kept down to the lowest possible minimum competition will be extremely difficult but I also know——"

A. Wait. All right.

Q. "—but I also know, as do you, that we cannot borrow money nor pay for a plant without a satisfactory
2491 profit. Therefore, there should be a further adjustment in price to allow us to what we both will agree is a satisfactory amount of profit per week. Otherwise, we cannot proceed with the plant and even if we start to operate we cannot continue." At that time you were talking with Mr. Nicht about opening a Sylacauga plant and at the same time you were discussing with Mr. Koessler the purchase of International, is that correct?

A. Certainly, and I emphasize what I said in that letter, therefore we can't operate without a satisfactory profit.

Q. That is what you meant when you testified this morning that you continually told Mr. Nicht you wanted more money?

A. There is the proof.

Q. You say: "Otherwise, we cannot proceed with the plant and even if we start to operate we cannot continue. There will probably be some additional changes and additions to this proposal after we both have a chance to study it further but I am giving it to you now so you will have a chance to look it over through the weekend and maybe I will be able to see you sometime next week in New York. Best regards. Joseph J.

Gorman." Is there anything else you want to add to
2492 that letter?

A. You said I was negotiating with that—I was negotiating with Walter Koessler. I only met Mr. Koessler one week. I hadn't given him the net worth.

Q. What?

A. The amount of the net worth.

Q. But referring to your meeting with Mr. Koessler; isn't it a fact that you met Mr. Koessler at a luncheon arranged by Mr. Nicht, at a restaurant in New York City?

A. It is my recollection, yes.

Q. It is?

A. Yes.

Q. And the purpose of the meeting was simply a friendly get-together?

A. That is right.

Q. Just for lunch, to get to know each other, as you knew other competitors?

A. That is right.

Q. And you don't recall the name of the restaurant in New York City?

A. Yes.

Q. What was it?

A. Columbo's, 45th Street and Second Avenue.

Q. And then after that lunch you went to the hotel with Mr. Koessler and not with Mr. Nicht?

2493 A. I have no recollection of going to a hotel with Mr. Koessler.

Mr. MOORE: May I inquire; counsel appears to be examining the witness from a transcript of testimony. For the purposes of our own information, I would like to know if it is testimony in this proceeding or some other proceeding?

Mr. BERNSTEIN: I would have no hesitation to state to the Court, if the Court wishes me to answer Mr. Moore—

The COURT: You are just looking at some notes of some kind, you are asking specific questions that occur to you?

Mr. BERNSTEIN: That is right.

The COURT: What difference does it make what it was used for. Ask him more rapidly. You were at Columbo's on 45th and Second Avenue, what is next? You didn't go to the hotel. All right.

By Mr. BERNSTEIN:

2494 Q. And isn't it a fact that at that first meeting you discussed the south primarily, he discussed the newsprint in the south and your other plant, is that correct?

A. I told you earlier what I thought we discussed. We discussed many things referring to the printing of comic supplements, including the south, newsprint, mechanics, unions, and so forth. What exactly we said thirteen years ago in Columbo's, I don't remember.

Q. Do you remember saying that he asked you whether the owners would be interested in selling the southern section of their plant?

A. As I recall, he said he would be interested in a share of the southern section. I said to him that the owners were not interested in selling a share of anything, if he wanted to buy anything he would have to buy it all.

Q. What did you understand him to mean?

A. I don't know.

Q. You don't know. Didn't you understand what he was taking about.

A. I didn't bother to find out because I knew there was no interest in doing a thing like that.

Q. I show you your testimony before the Grand Jury on October 11, 1960, and I ask you to read it to yourself, the questions you were asked and the answers that you made, and then I will ask you some more questions.

2495 (Witness examines testimony referred to)

Mr. RAICHLE: Just a moment. Could the record show that the witness was examining during the period that the court reporter was replenishing his ribbon supply and the Grand Jury testimony, which counsel had in his hand and showed to him—the reason I want that on the record is because I am entitled to see it, he having used it to examine the witness.

The COURT: You mean this Grand Jury——

Mr. RAICHLE: Yes.

The COURT: If you want to see it I am going to order that you see it. He is not going to examine the witness from part of it unless you see all of it.

Mr. BERNSTEIN: May the record show that the witness was shown—Mr. Gorman, will you state what pages of this transcript you examined? State which pages you examined?

The WITNESS: 981, 982, 983, 984.

2496 The COURT: How many pages in all did he testify to?

He said four there. How many pages did he fill up with all his testimony?

Mr. BERNSTEIN: His examination went from 949 to——

The COURT: Don't you have an index? Is that all his testimony?

Mr. BERNSTEIN: 949 to 1057, your Honor.

The COURT: Over 100 pages, you are referring to four?

Mr. BERNSTEIN: That is correct.

The COURT: I assume that you will want to read the hundred to see if there is anything to mellow those four.

Mr. BERNSTEIN: No objection to that, your Honor.

The COURT: Did you read those four pages, the questions asked and the answers returned by you?

The WITNESS: Yes.

The COURT: Is that what you then said?

The WITNESS: As I recall it, yes.

The COURT: I assume that in the other hundred pages there may be other questions and answers that might modify those four?

The WITNESS: I have no idea what was in the other
2497 pages.

The COURT: There is no question that this is an accurate transcript of what you then said, to the best of your recollection?

The WITNESS: Yes.

By Mr. BERNSTEIN:

Q. You were asked this question, Mr. Gorman, on page 978, you were asked—excuse me, page 977, line 19, you were asked:

"Q. When was the first time that you or anyone else on behalf of International Color had discussions with any representative of Greater Buffalo Press in regard to the sale?"

"A. In the latter part of 1954 or the early part of 1955.

"Q. How did those discussions come about? In other words, who initiated them?"

"A. I had lunch with Mr. Koessler and Mr. Nicht.

"Q. Who arranged the meeting?"

"A. I think I told Mr. Nicht——"

Mr. STEVENS: Excuse me, this isn't essentially my party, probably not at all, but the pages Mr. Bernstein says
2498 he is reading from are not among the pages which Mr. Gorman just said were the pages he read.

Mr. BERNSTEIN: That is correct.

Mr. STEVENS: You said 978 is the page you are reading from, he read from page 981 through 984.

Mr. BERNSTEIN: That is correct.

Mr. STEVENS: What are you doing now?

Mr. BERNSTEIN: I am reading the questions and answers. I am going to ask him whether the questions and answers are true. Conforms to what he testified to before. It is background so that you can understand the questions he looked at on those pages. You have intervening colloquy. Counsel would have the opportunity to read the whole thing so there shouldn't be any problem with it.

The COURT: When?

Mr. BERNSTEIN: We will give them copies at the close of the examination. We will give it to them now.

2499 The COURT: I thought you said you contemplated this man would be off in a hour?

Mr. BERNSTEIN: I will be through in fifteen minutes, Your Honor.

The COURT: You got 100 pages to read. All right, go ahead.

By Mr. BERNSTEIN:

"Q. How did these conversations come about, who initiated them?

"A. I had lunch with Mr. Koessler and Mr. Nicht.

"Q. Who arranged the meeting?

"A. I think that I told Mr. Nicht that I was on a rather friendly basis with all other competitors but I didn't know Mr. Koessler. He suggested it would be nice to know him, he arranged for the lunch."

Mr. RAICHLE: That is what he said here.

Mr. BERNSTEIN: There is no doubt about it.

By Mr. BERNSTEIN:

Q. Then on page 979 you refer to the fact that you met at a restaurant in New York City, you don't recall the name of it, you were asked what the discussions generally were about, and you said at that time, as you say here today, machinery, tools, equipment, newsprint, union negotiations, 2500 union contracts and then——

Mr. MOORE: May I inquire what the purpose of this examination is, he is just confirming. If you want to impeach the witness——

Mr. BERNSTEIN: The next question will give you the purpose.

Mr. MOORE: We have been fifteen minutes getting there.

By Mr. BERNSTEIN:

Q. "Q. During that conference or meeting on that day did the discussion at all turn to the sale of International Color Printing Company?

"A. We discussed the south primarily and he discussed the newsprint in the south and what were our plans. He said he wondered if the owners would be interested in selling the southern section of their plant, of their setup, in other words, he might be interested in the southern setup.

"Q. By southern setup you mean what?

"A. The plant we had planned to establish there.

"Q. The one at Sylacauga, is that correct?

2501 "A. Yes.

"Q. At that time no capital was contributed toward creating such a plant at all, except the understanding you had in regard to newsprint, is that correct?

"A. Yes. He didn't know whether there was any capital set up or not.

"Q. Did you learn from him whether or not he intended to erect a plant in the south?

"A. I think prior to that time he already had a contract for newsprint at Lufkin.

"Q. Do you know whether he had a plant in Lufkin at that time?

"A. He did not.

"Q. At that time you knew he contemplated building a plant in Lufkin?"

Then a juror asked which Koessler are you talking about, and he said Walter, and their is colloquy about making sure it was the same Koessler. Then he was asked:

"Q. What was the result of the first meeting?

"A. I told him that I felt sure that the company, the stockholders, would not be interested in such an arrangement for investment on his part in the south, but they might be interested in selling the whole works. I asked him if he would
2502 be interested in that."

and his response was the same as the witness has testified to here before.

The COURT: What is contrary to what he said on direct examination?

Mr. BERNSTEIN: It is not contrary. It adds one fact that he denied on cross-examination.

The COURT: Denied or——

Mr. BERNSTEIN: I say he denied. I asked him on cross-examination whether they were contemplating a plant at Sylacauga, whether International was contemplating a plant at Sylacauga, and whether Mr. Koessler discussed purchasing the southern portion of the International operation, and he said no. So it is for that purpose, to show that on previous occasions, under oath, he testified that at the first meeting with Mr. Koessler, Mr. Koessler said he was interested in buying the southern section of International's operation at a time when Mr.
2503 Koessler had plans for a Lufkin plant, and then the transaction developed from that.

Mr. MOORE: Now, Mr. Bernstein, you stated he denied, the witness denied under cross-examination here about Mr. Koessler inquiring whether or not they would be interested in selling a section in the southern plant; the witness testified when you asked him, he said yes—maybe I better read it.

The COURT: Something about all or nothing at all.

Mr. STEVENS: Mr. Koessler asked if he was interested in selling the southern section, the southern plant, the owners said—Mr. Gorman testified that the owners were not interested in selling half of anything. That is what he testified to when you asked him before.

The COURT: Well, gentlemen, I think we ought to recess. Give all the lawyers sets of that Grand Jury testimony, will you?

2504 Mr. BERNSTEIN: Yes. May we meet with counsel during this recess to get these documents numbered? We can go along if we do that. I think we will be through in fifteen minutes.

The COURT: Do the best you can.

(Thereupon the Court was in recess at 2:45 P.M.)

(Proceedings resumed, pursuant to recess, commencing at 3:10 P.M.)

Mr. BERNSTEIN: If your Honor please, counsel have gone over a number of documents and I would like to have them marked and offered in evidence as against Greater Buffalo, subject to connection as against NEA. I think that will expedite the proceeding.

The COURT: All right.

Mr. STEVENS: May I understand we have the objection?

The COURT: This is the same class of subject we
2505 have been working with right along. I understand.

(Thereupon document referred to was marked Plaintiff's Exhibit P-108 and received in evidence.)

Mr. BERNSTEIN: P-108 in evidence is a letter dated July 19, 1954, from Mr. Gorman to Mr. Ralph Watt of the Coosa River Newsprint Company.

(Thereupon document was marked Plaintiff's Exhibit P-109 and received in evidence.)

Mr. BERNSTEIN: P-109 in evidence is a memorandum dated July 19, 1954, by Joseph J. Gorman, subject: "Details on living conditions, recreation, educational, and worship facilities in Sylacauga and Talladega."

(Thereupon document was marked Plaintiff's Exhibit P-110 and received in evidence.)

2506 Mr. BERNSTEIN: P-110 in evidence is a letter August 11, 1954, from Mr. Gorman to Mr. Frank Nicht.

(Thereupon document was marked Plaintiff's Exhibit P-111 and received in evidence.)

Mr. BERNSTEIN: P-111 marked in evidence is a memorandum to Mr. Gorman from Joe Clinton, dated January 24, 1955.

(Thereupon document was marked Plaintiff's Exhibit P-112 and received in evidence.)

Mr. BERNSTEIN: P-112 in evidence is a memorandum dated April 5, 1955, to Mr. Gorman from Joe Clinton.

(Thereupon document was marked Plaintiff's Exhibit P-113 and received in evidence.)

2507 Mr. BERNSTEIN: P-113 in evidence is a letter dated May 15, 1955, from Mr. Gorman to Mr. R. O. Sternberger of the Hearst Corporation.

(Thereupon document was marked Plaintiff's Exhibit P-114 and received in evidence.)

Mr. BERNSTEIN: P-114 in evidence is a letter dated June 3, 1955, from Mr. Joseph J. Gorman to Mr. Jack Nealeans, Chamber of Commerce, Sylacauga, Alabama.

(Thereupon document was marked Plaintiff's Exhibit P-115 and received in evidence.)

Mr. BERNSTEIN: P-115 in evidence is a letter dated September 27, 1955, from Joseph Gorman to Mr. Frank Nicht.

(Thereupon document was marked Plaintiff's Exhibit P-116 and received in evidence.)

2508 Mr. BERNSTEIN: P-116 in evidence is a memorandum, dated April 13, 1956, from Bessie J. Gorman to Joe Clinton.

(Thereupon document was marked Plaintiff's Exhibit P-117 and received in evidence.)

Mr. BERNSTEIN: P-117 in evidence is a memorandum to Mr. Gorman, dated March 6, 1957, from Joe Clinton.

(Thereupon document was marked Plaintiff's Exhibit P-118 and received in evidence.)

Mr. BERNSTEIN: P-118 in evidence is a letter dated June 26, 1956, from Joseph J. Gorman, president, International Color Printing Company, to Cecil Waldrop, Chairman, Industrial Development Board of the City of Sylacauga, Incorporated.

2509 (Thereupon document was marked Plaintiff's Exhibit P-119 and received in evidence.)

Mr. BERNSTEIN: P-119 in evidence is a letter dated July 2, 1957, from Mr. Gorman to Mr. Koessler.

By Mr. BERNSTEIN:

Q. Mr. Gorman, I show you P-108, P-109, P-110, P-111, P-112, and ask you to follow those documents with me as I summarize the nature of the documents. P-108—please check me if I am incorrect—P-108, what is the date of that letter?

A. July 19, 1954.

Q. That is a letter from you to Mr. Watt, and the subject matter of the letter setting up a printing plant in the south and sale of paper, and you say: "You have the paper to sell. King Features and International Color Printing Company have the use for it." On page two it discusses the factors that you took into consideration concerning the establishment of a plant in that area, is that correct?

A. That is right, always keeping in mind that we are not committed to build a plant in the south and to take any paper.

2510 Q. P-109 is what document?

A. July 19, 1954.

Q. And that is a memorandum that you prepared, and how would you summarize the nature of that?

A. Details on living conditions in Sylacauga and Talladega.

Q. And that is a survey you made on a trip down there, is that correct?

A. Same qualifications.

Q. And what is P-110?

A. August 11, 1954, to Frank Nicht.

Q. Your letter to Frank Nicht, and there you talk about the need for a mill contract, that is the source of supply, is that correct?

A. Also talked about—

Q. I will go into the other things. You talk about that among other things?

A. Yes.

Q. And then you tell him that you have to decide on the kind of presses and the union arrangements, is that correct?

A. That is right.

Q. Then you talk about— you say this: "I suppose that Mr. Watt may be somewhat surprised when he learns that Inter-

national Color Printing Company and King Features
 2511 are not one and the same, and then again he may not be surprised. Certainly he and the other directors will want to know that if they make a contract with us it will be practically the same as making it with King. Perhaps we will get some line on the mill thinking when you and I talk with Mr. Wakeman in New York about August 18th." You discuss labor conditions in the area and then on page two you discuss press equipment and then you discuss flexibility. Is there anything else that you want to add?

A. We also wanted to work out a contract that would put us in better shape to do these things than we have been in the past.

Q. You say that in the letter?

A. Yes, I did.

Q. Okay. P-111 is what document?

A. January 24, 1955, a report on the trip to Georgia and Alabama by Roger Zarens, Tom Brennan and Joe Clinton.

Q. All of those people went down there?

A. That is right.

Q. And this was before—is this while you were having discussions with Mr. Koessler concerning—

A. That is right.

Q. They had not acquired the plant, is that correct?

2512 A. Well, you notice the date, January 24th.

Q. Six months before the acquisition?

A. That is right.

Q. And that was a detailed trip and report, was it not?

A. Based on the fact that we never gave up hope that something might happen to make it possible to go ahead.

Q. You were seriously pursuing the opening of a Sylacauga plant?

A. Provided we could get the King Feature contract.

Q. Provided you could get the King Feature contract, you were talking with the Luria Construction Company, you were talking—you went into details as to the building size and as to the cost per square foot?

A. I was not talking, they were talking.

Q. You were listening?

A. They wrote it to me.

Q. They wrote it to you. What did all these people do on the trip?

A. They looked around at just what you said, buildings, conditions, and so forth.

Q. Were there any details they were not considering, necessary for the pre-planning of opening a plant there?

Mr. MOORE: Well, I will object to the form of 2513 that question. Any details they were not considering; how can he answer that?

Mr. BERNSTEIN: I will withdraw it.

By Mr. BERNSTEIN:

Q. Is this a fair statement; that you were sending—in order to open a plant in Sylacauga a great deal of preplanning had to be done?

A. Besides getting a contract.

Q. Let's preface all my questions that International Color Printing Company was not going to open a plant in Sylacauga unless it had a long-term contract with King at a favorable price——

A. That is right.

Q. Leave that aside, we will assume all of my questions are based on that assumption.

A. Then I don't know why you are proceeding any further.

Q. Well, let's pursue it. If you had that agreement at that time you would have to do a great deal of preplanning in order to get the plant open, is that correct?

A. Depending on how fast you wanted to open the plant.

Q. No matter how fast or how slow, you would have to do the preplanning before the plant opened?

2514 A. That is correct.

Q. On January 24, 1955, were you then doing all of the things that you thought necessary for preplanning to open a plant in Sylacauga?

A. That is right.

The COURT: What is your point in all this? Is it your theory that he, indeed, was not working for International or King, but this was all an under the table scheme for Koessler?

Mr. BERNSTEIN: Absolutely not, your Honor. The Government's position is that Mr. Gorman was seriously doing everything necessary toward opening a plant in Sylacauga, Alabama, that had started many years before because of his concern for the western flank of the south, for the competition going to be offered by Lufkin, and that after Mr. Koessler acquired the

stock of International, he continued on with those plans, and that while Greater Buffalo Press contributed something additionally, some ideas, it was a continuation of everything that had gone on before and had been carried on, it was just a continuation of it. This is all part of the Government's contention; that the sale of International to Greater Buffalo and the contract with King, and those letters we read in evidence yesterday as to the arrangement between Nicht and Koessler are all one transaction, all one part of one package. It cannot be viewed in isolation, one part without the other part.

Mr. MOORE: The simple answer to that, the state of the record, is that not only did Greater Buffalo contribute plans and at the same time a plant, but they contributed the cold, hard cash which nobody else had.

Mr. BERNSTEIN: Nobody denies that, and at an appropriate time——

Mr. MOORE: It is essential——

Mr. BERNSTEIN: ——at an appropriate time we will go into the details of the content of all these memoranda and what the Government claims for them. Suffice it to say, at this time we want to show that Mr. Gorman on January 24, 1955, and whatever dates are in those documents, was continuing on, making serious plans toward opening a plant in Sylacauga.

By Mr. BERNSTEIN:

Q. May 15, 1955, your letter to Mr. Sternberger talks of the Hearst Corporation, talks about the paper situation——

Mr. STEVENS: Does that have a number?

By Mr. BERNSTEIN:

Q. What is the number of that exhibit?

A. P-113.

Q. That letter concerns further discussions or further communication with Mr. Watt about the purchase of newsprint, is that correct?

A. Yes, sir. May I say that this is all a continuing effort to have things ready in case we got a contract we could go ahead.

Q. That Coosa River Newsprint contract we showed you before——

A. Had nothing to do with it.

Q. That was an outgrowth of this P-113 letter?

A. In case we went ahead we would get the paper from Sternberger.

Q. That contract was the culmination of what you discussed in P-113?

A. What contract?

Q. P-56 in evidence.

A. I had nothing to do with that.

Q. It was the culmination of the negotiations that you had carried on with Mr. Watt?

A. Sternberger—

Q. Is that correct?

A. —so that the paper would be ready to use no matter who used it. In the meantime we might have no contract with King and have no use for the paper whatever.

Q. Joseph J. Gorman did the negotiations that led up to the contract, is that correct?

A. Yes, but that doesn't mean I was going to get the business.

Q. We know that.

A. That was all a nebulous hope. I think you are wasting your time.

Q. I want to make sure that Mr. Joseph J. Gorman
2518 had a hope to get a contract?

A. I will admit that, that I had a hope.

Q. Will you also admit that you conducted the negotiations with Mr. Watt of the Coosa River Newsprint?

A. With the hope we would get a contract.

Q. That hope, those negotiations, led up to the contract, P-56, between Coosa River Newsprint Company and Hearst?

A. They signed that contract—Sternberger—in case we were out of the picture altogether Hearst could come in.

Q. You were in the picture?

A. I wasn't in the picture until I had money.

Q. That is what you mean by not being in the picture?

A. I was out of the picture.

Q. Except for the money end, you were doing the detail work?

A. Isn't that the important end?

Q. Even if you have the money end you could not consummate the transaction without the details?

A. No.

Q. You were doing the details?

A. Always in the hope, yes.

Q. Thank you. Then on—

A. At the time I didn't have much hope.

Q. P-114 in evidence, June 3, 1955, again before the purchase by Greater Buffalo of the stock of International, you write to the Secretary of the Chamber of Commerce and you say in the last paragraph: "I wish to impress upon you that this is a very responsible company and King Features Syndicate is fully responsible and just between the Sylacauga Chamber of Commerce and International Color Printing Company I can confidentially state that we are going to locate in Sylacauga and if I cannot give you a full statement by June 7th, it is a delay which simply cannot be avoided." You meant that with the hope that you would get the contract from King?

A. That is right.

Q. You were then negotiating with King for the contract?

A. Yes.

Q. Is that right?

A. That is right.

Q. And that is the contract that ultimately wound up on August 17, 1955, after Greater Buffalo had the stock of International?

A. No, no, the contract which I wanted from King was going to give us a satisfactory profit to go ahead; that contract didn't.

Q. You told us earlier today that the contract that was executed on August 17, 1955, was the result of negotiations that you had with Nicht for the last six months, is that correct?

Mr. MOORE: He did not say that.

By Mr. BERNSTEIN:

Q. Did you say that?

A. No.

Q. What did you say?

Mr. RAICHLE: He said it came six months later.

The WITNESS: I said it came six months later.

Mr. BERNSTEIN: I know, that is what Mr. Raichle just said.

Mr. RAICHLE: That is what the record shows.

The COURT: I am sure this man is not echoing Mr. Raichle. Mr. Raichle has studied with this man, knows. You don't have to be prodded by Mr. Raichle in any manner?

The WITNESS: What is the question?

By Mr. BERNSTEIN:

Q. The question is, the contract that you had negotiated with Mr. Nicht for the printing with International, which you

executed in August of 1955, was the result of negotiations that you had had with Nicht, is that correct?

A. That is right.

Q. For how long had the negotiations been going on?

A. For a year. Six months or a year, I don't know.

The COURT: You said you were pushing 71, we are going to have three more days of this in July, not for you I don't mean. I hate to have you come back. Do you have any feeling on it?

The WITNESS: You don't have to worry about me.

The COURT: I don't think we are going to get finished. I am sure that Mr. Raichle and others are going to have redirect. I keep knocking these hours off, fifteen minutes off, and unless there is something very imminent here—

Mr. BERNSTEIN: Could we resume on the twelfth, your Honor?

The COURT: Well, I was thinking about this man. If he doesn't want me to worry, I'm not.

The WITNESS: I don't like it.

The COURT: Do you see any chance for you to finish today?

Mr. BERNSTEIN: No, your Honor.

The COURT: The holiday is coming on, it is a hot day, a sleepy one, at least for me. We will get you back, will you come up on the twelfth at ten o'clock?

The WITNESS: Yes.

The COURT: I think we can get through with you in the morning. I was concerned about possibly finishing in lieu of having you come back, but I don't see it. Well, I think we will recess and adjourn this case until the twelfth of July at ten o'clock. I would like every effort made to get it crisp and moving fast. All your exhibits—I would like to have you come in the day before, if possible, and have them marked for identification ahead of time, and show them to the lawyers, if you can, so they know what is contemplated. That will save a lot of time. Then we will take up, as we have agreed, in chambers, as soon as we get Mr. Gorman finished, your end of the thing?

Mr. STEVENS: Yes, indeed, your Honor.

The COURT: I think it's a good time to quit, we will do so. I hope you each have a pleasant Fourth of July holiday.

(Thereupon the Court was in recess at 3:45 P.M.)

2524 PROCEEDINGS OF JULY 12, 1967, COMMENCING AT
10:10 A.M.

(Thereupon documents were marked Plaintiff's Exhibits P-120 through P-140 for identification.)

JOSEPH J. GORMAN, having been previously duly sworn, resumed and testified further as follows:

CROSS-EXAMINATION

By Mr. BERNSTEIN (Continued):

Q. Mr. Gorman, before the close of the last session, we were—I was inquiring about your participation in the contract between Coosa River Newsprint and Hearst. Now, isn't this the fact as to what the situation was; at least a year before Greater Buffalo purchased International, International was making detailed plans to open a plant in Sylacauga, which included getting a long-term contract from Nicht and getting assistance from King in financing the plant?

A. Yes, sir.

Q. And isn't it true that as part of that plan, the first thing necessary to be done was to obtain—one of the first things to be done was to obtain a contract for newsprint?

2525 A. Yes, sir.

Q. And isn't it true that you, Joseph J. Gorman, as a representative of International Color Printing Company, negotiated a contract with Coosa River Newsprint Company, and then they insisted that the contract be executed with Hearst because of Hearst's better financial position?

A. It is not true that I ever negotiated a contract with the Coosa River Newsprint Company.

Q. Isn't it also true that Coosa River, as a result of your—strike that. Isn't it true that a ten-year contract was executed between Coosa River and Hearst that was to expire in 1965, and then after Greater Buffalo acquired International, Coosa River Newsprint contacted you, Joseph J. Gorman, as representative of International, and obtained your agreement to extend the contract they had with Hearst for four years, from 1965 to 1969?

Mr. RAICHLE: Wait a minute——

The COURT: Gentlemen——

The WITNESS: I had no agreement.

Mr. RAICHLE: I object to that, first as to form, he said, "Isn't it also true", and the witness said that other matter which he was interrogated about was not true. You can't start the question: "Isn't it also true?"

The COURT: Could you separate that a bit Mr. Bernstein?

Mr. RAICHLE: Too many questions in one.

By Mr. BERNSTEIN:

Q. Isn't it true, Mr. Gorman, that a ten-year contract was executed between Coosa River Newsprint and Hearst to expire in 1965?

A. Yes, sir.

Q. Isn't it true that after Greater Buffalo acquired International Coosa River contacted you, Joseph J. Gorman, as representative of International, and obtained your agreement to extend the contract they had with Hearst for four years, from 1965 to 1969?

Mr. RAICHLE: I object to that part, representative of Hearst. Why do you put that in? There is no evidence in the case to justify it.

The COURT: Now, Mr. Gorman understands——

The WITNESS: I have no recollection of any extension of any agreement whatever with Coosa River on the part of International.

2527 By Mr. BERNSTEIN:

Q. You have no recollection that you agreed with Hearst that International—you, Joseph J. Gorman, as representative of International, agreed with Hearst that International would buy the newsprint from Hearst that it had contracted to get from Coosa River?

A. That is correct, provided we got a long contract from King Features which would enable us to use the newspaper. I told Mr. Sternberger and Mr. Nicht over and over again that we couldn't use any of the newspaper unless we had a contract with Hearst, unless we had a plant down there, and we would not put a plant there unless we had a contract with King to make it possible to amortize that building. We had no contract.

Q. All right. I invite your attention to your Grand Jury testimony, page 972——

Mr. STEVENS: Do you have a copy of that that we may look at?

Mr. BERNSTEIN: Yes, I do.

Mr. STEVENS: Thank you.

By Mr. BERNSTEIN:

Q. You were asked this question at line 13: "Prior to the time of the acquisition of Greater Buffalo Printing was any determination reached in regard to going to the south?" What was your answer?

A. "In about the year 1954 I obtained for the first time a promise from the customer, Coosa River Newsprint Company, that they would allow us to purchase newsprint and that the International Color Printing Company was trying to make a determination to go into the south."

Q. You were asked this question: "When you received a promise, where was it?"

A. "At Coosa, Alabama."

Q. "Was that a written promise or was that an oral promise?"

A. "It was an oral promise and later a written promise."

Q. "As committed to writing, what did the promise contain?"

A. "That they would sell us so many tons of paper over so many years."

Q. "Outside of International Color Printing Company was any other corporation or individual a party to that contract?"

A. Do you want me to continue?

Q. Yes.

A. "The Coosa—"

Mr. RAICHLE: Can the record show that we are reading from the Grand Jury testimony?

2529

By Mr. BERNSTEIN:

Q. What was your answer to the Grand Jury under oath?

A. "The Coosa River people finally insisted that the Hearst Corporation should be a party to this contract. All of our business was with King Features. They didn't want to do business with us alone because we had only one contract."

Q. Now—

Mr. RAICHLE: Wait a minute. "They" refers to the Coosa people, right, Mr. Bernstein?

By Mr. BERNSTEIN:

Q. Does the quote "They" refer to—

A. Yes.

Q. Then you were asked this question: "In what way did the Hearst Corporation become a party to that contract?"

A. "Coosa River—the Hearst Corporation was to take over the contract for the newsprint, we were to buy the newsprint directly from Hearst."

Q. You were asked this question: "In other words, the Hearst Corporation would be liable for any of the paper which you people, International Color Printing, used there?" What was your answer?

2530 A. "Yes, I believe in later years we released them from that, they got out of it."

The COURT: Right there, excuse me, Mr. Bernstein, but from the former testimony this corporation in Wilkes-Barre was in bad shape, you know that?

Mr. BERNSTEIN: That is the former testimony. The Government disputes that and will offer evidence through this witness that the company was not insolvent. The Government's contention is that International and Joseph J. Gorman was, up until the very day of the sale to Greater Buffalo, making detailed plans to open a plant at Sylacauga, Alabama, with Hearst as the exclusive sales agent, and all printing at Sylacauga to be——

The COURT: He said they had that hope, providing they could get a long-term deal with their only customer. Further he said—I am trying to give you a view of the Court sitting, I hope, impartially here—that he said the Coosa
2531 River paper people were not willing to take that risk, they wanted some guarantee of payment. That is his view. You say that is not the proper view, the factual view?

Mr. BERNSTEIN: The Government proposes to show that that is not the whole story, that the factual——

The COURT: It is part of the story?

Mr. BERNSTEIN: It is part of the story, yes.

The COURT: As part of the story it is accurate?

Mr. BERNSTEIN: That part of it they didn't want to take International's risk is correct. The other part that is very important, and this is what the Government proposes to produce through the testimony of this witness, the Government proposes to prove through this witness that as part of the entire transaction, he was negotiating a contract with King, and at
2532 the same time he was making detailed plans, every plan possible, for going ahead with the building of the Sylacauga plant and that arrangement developed into the purchase of the International plant by Greater Buffalo, and

he then continued on in his role, as International, to open up the plant, an International plant at Sylacauga, and it was only after the injunction of this Court that prohibited International from going ahead with the development of the Sylacauga plant that it then changed and became a Greater Buffalo plant under different organization.

The COURT: All right.

Mr. BERNSTEIN: That is the Government's theory and the Government proposes to prove it through this witness.

By Mr. BERNSTEIN:

Q. So, Mr. Gorman, it is true then—strike that. P-121 for identification, Mr. Gorman, is a memorandum that you wrote to Mr. John Booth, dated November 7, 1955, is that correct?

A. Yes, sir.

Q. Would you please read that memorandum?

2533 A. "Have just heard from Bob Sternberger and he said that there probably will be an increase——"

Q. Excuse me, who is Bob Sternberger?

A. He was the manager of the newsprint department of the Hearst Corporation.

Q. All right. Would you resume your reading, please?

A. "Have just heard from Bob Sternberger and he said that there probably will be an increase in Murray Bay price but he doesn't know how much or when. Regarding the letter which I wrote to him the other day he said he would have to give my questions some more thought. Regarding Coosa River contract they have suggested that we increase the period for another four years, that is from 1955 to 1969."

Q. That is a typographical error, it should be 1965 to 1969 instead of 1955 to 1969 because it says four years, is that correct?

A. That is correct. "I have agreed to that. Hearst Enterprises will prepare a contract to sell Coosa River newsprint to us under the same terms as now exist in contract between Coosa River and Hearst Enterprises."

Mr. BERNSTEIN: I offer P-121 in evidence.

Mr. RAICHLER: No objection.

Mr. STEVENS: Objection as to NEA.

2534 The COURT: Received.

(Thereupon Plaintiff's Exhibit P-121, previously marked for identification, was received marked in evidence.)

By Mr. BERNSTEIN:

Q. Now, I show you P-107 for identification. P-107 for identification purports to be an amendment to the newsprint contract between Coosa River Newsprint Company and Hearst Enterprises, signed by Bob Sternberger, and note paragraph two where it says: "Term", and read that to yourself.

A. (Witness examines document.)

Q. Note the first paragraph which says: "Supplementing the newsprint contract between the undersigned dated December 9, 1954, it is hereby agreed as follows:" Now, I ask you, Mr. Gorman, isn't it a fact that as a result of your agreement with Coosa River that Coosa River extended its existing contract with Hearst for a period of ten years, from January 1, 1956 and ending December 31, 1969, and that you agreed to it, and that you prepared or Hearst prepared a contract to sell Coosa
2535 River newsprint to International under the same terms and conditions as exist in the contract between Coosa River and Hearst Enterprises?

A. With qualifying letters that we would buy the newsprint from Hearst which they got from Coosa, provided we put up a building and erected a plant, and provided King gave us a contract which would make it possible for us, a failing company, to do it.

Q. With that reservation, it is true that you negotiated a contract with Coosa River, they insisted it be executed with Hearst because of Hearst's better financial——

A. I have no recollection of ever negotiating a contract with Coosa River.

Q. You have no present recollection of it, you don't deny it?

A. I deny it, I have no recollection of it, no recollection.

Q. You had recollection of telling that under oath to the Grand Jury?

Mr. RAICHLE: Show him where you claim he said that?

Mr. BERNSTEIN: The testimony, you read it.

The WITNESS: I didn't say I had a contract.

2536 By Mr. BERNSTEIN:

Q. Let's look at that again, Mr. Gorman, your testimony under oath in October 1960. Was your recollection clearer then than now?

A. Is this just what I read a moment ago?

Q. That is correct.

A. I didn't sign any contract there.

Q. You were asked this question: "Prior to the time of the acquisition of Greater Buffalo Printing was any determination reached in regard to going to the south?"

A. What are you reading?

Q. Page 972, line 13. I just read you that question.

Mr. RAICHLE: It is the one you read before.

By Mr. BERNSTEIN:

Q. At line 16 your answer was: "In about the year 1954——", and I invite your attention to the fact that the agreement between Coosa River and Hearst is dated December 16—December 8, 1954.

Mr. RAICHLE: That is confusing. Are you reading now?

By Mr. BERNSTEIN:

Q. I am resuming the reading: "I obtained for the first
2537 time a promise from the customer, Coosa River News-
print Company, that they would allow——"

A. Wait a minute. "I obtained for the first time a promise from the customer——"

Q. What customer?

A. I don't know what that means.

Q. Then you said: "A Coosa River Newspaper Com-
pany——"

Mr. RAICHLE: Newsprint company.

By Mr. BERNSTEIN:

Q. Your answer was: "A River Coosa Newspaper Com-
pany", it means a newsprint company?

A. Newsprint company, yes.

Q. Was it a newspaper?

A. Newsprint company.

Q. "That they would allow us to purchase newsprint and that the International Color Printing Company was trying to make a determination to go into the south.", is that correct?

A. Let me explain.

Q. You will explain later, I want——

The COURT: This is a very complex matter and to have him explain later, when it is all something new, it isn't of much value to me.

Mr. BERNSTEIN: I am sorry, your Honor.

2538 The WITNESS: I walked into the Coosa River News-
print Company in 1954 because I happened to be in
Birmingham and I thought maybe they had some paper to sell.
Up to that time they had none to sell. They had just previous

to my arrival had a Board of Directors meeting and they were going to contact me about selling me newsprint.

By Mr. BERNSTEIN:

Q. What year was that?

A. 1954, and they thought it was strange that I should happen in at that moment. They offered me paper for \$119.50, and the market price at that time I think was \$127.50. On that basis we thought we had a sign of light, something from behind the clouds to give use a little bit to go ahead on, and they would erect a building for us.

Q. Coosa River?

A. Yes, sir.

Q. Okay.

A. Shortly after that they found that I was not Hearst, they changed the price from \$119.50 to \$125.50.

2539 Q. Excuse me. Prior to that time did they think you were there as a representative of Hearst?

A. Apparently they thought it was the same.

Q. You and Hearst were one and the same?

A. Yes.

Q. Was this common knowledge throughout the industry that you and Hearst were one and the same?

Mr. RAICHLE: I object.

The COURT: Do you have any such knowledge?

The WITNESS: No.

The COURT: Then he can't testify.

The WITNESS: They assumed that. I couldn't help that. I didn't know they thought that.

The COURT: They were your only customer?

The WITNESS: King was the only customer. I think King probably let it be known from time to time that we were their contractor. People didn't differentiate. Eventually Coosa pulled out and said, "We can't give you the building, we can't give you the price", and the bottom dropped out. We were still willing to go along and consider using the paper even

2540 at that price, provided we could get a contract from King. Whether Hearst bought us or whether the Govins continued to own it or whether it was sold to somebody else, I thought a plant in the south was necessary and I was going along in the hope that something would happen and nothing happened.

By Mr. BERNSTEIN:

Q. Is there anything else you want to add to what happened in November of 1955, this is after Greater Buffalo acquired International's stock, and then Coosa River came to you and asked you to extend the Hearst contract for four years, from 1965 to 1969, tell us about that?

A. I have no recollection of that.

Q. You have no recollection of that?

A. No.

Q. Now, P-120 for identification is your letter to Mr. Frank Nicht, dated August 11, 1954?

A. That is right.

Q. Now, I invite your attention to the third—well, let's take the first paragraph: "I have been studying
2541 your letter of July 26th regarding speedy work on plans for southern plants." This is August 11, 1954, that is almost a year before Greater Buffalo acquired International, is that correct?

A. Yes, sir.

Q. And you say: "You said, 'I am anxious to be in a position to go ahead with our part of the program which, of course, involves client relations and sales. I suppose the first thing necessary is to feel sure that we have a deal with some mill. I presume that if you decide it would be best to have the plant next to or nearby a mill that the mill wouldn't make an arrangement with any other supplement printer.'" You are saying there that that is what Nicht told you, that he wanted an arrangement with a newsprint mill, he wanted a newsprint mill that wasn't going to deal with any other supplement printer?

A. That is what he wanted, he was always assuming something.

Q. You wrote to him, telling him what he said to you. Let's get your answer. This is Joseph J. Gorman speaking in behalf of International Color, and Joseph J. Gorman says: "Now let us take each item separately. First and the most important we need to be certain of the mill contract, that is, the source of supply."

2542 A. Read the whole paragraph.

Q. What?

A. Read the whole paragraph, the first paragraph.

Q. I'll come back to that and you can add anything you want.

Mr. RAICHLE: Why can't you read it?

Mr. BERNSTEIN: I will, I will.

Mr. RAICHLE: Read it now.

Mr. BERNSTEIN: I want the record to be clear——

Mr. RAICHLE: Please don't shout every time I got to make an objection, will you?

Mr. BERNSTEIN: Mr. Raichle, let the record show you are shouting.

Mr. RAICHLE: I certainly am, to overcome the ungentlemanly noise you make every time I object, and I object to it.

Mr. BERNSTEIN: It isn't ungentlemanly, when I haven't finished my remarks and you interrupt, I must continue and to be heard I must raise my voice, that is only natural.

Mr. RAICHLE: That is a plea of guilty, an explanation, and not a good one. I submit that the time to read the paragraph is now so that what the witness has already been interrogated about would be found in context. That is consistent with your Honor's previous ruling.

Mr. BERNSTEIN: I will abide by your request, Mr. Raichle, in the interest of saving time, and I will begin reading from the beginning of the letter, the first paragraph of which contains Mr. Gorman's statement to Mr. Nicht, and then a quotation in which he quotes a letter received from Mr. Nicht, then he ends that quotation and then Mr. Gorman resumes his statement. The letter reads——

The WITNESS: Pardon me——

Mr. BERNSTEIN: The letter reads——

The WITNESS: Pardon me, where is the quotation ended?

Mr. BERNSTEIN: Excuse me, Mr. Gorman——

The COURT: This is the letter, isn't it?

Mr. BERNSTEIN: Yes.

The COURT: Read it.

Mr. BERNSTEIN: It reads as follows: "Dear Frank: I have been studying your letter of July 26th regarding speedy work on plans for southern plant. You said, 'I am anxious to be in a position to go ahead with our part of the program which, of course, involves client relations and sales. I suppose the first thing necessary is to feel sure that we have a deal with some mill. I presume that if you decide it would be best to have the plant next to or nearby a mill that the mill wouldn't make an arrangement with any other supplement printer. Like you I would like to——' "

The WITNESS: Pardon me, there is no indication with a quote whether I said the next thing or he did.

Mr. BERNSTEIN: No, let the record be clear, I have been reading ever since the words "I am anxious to be in a position," I am reading what you in your letter have quoted as Nicht saying to you.

The WITNESS: That is right, then there is a quote missing. There is a question mark missing.

By Mr. BERNSTEIN:

Q. No, there is a quote after "mill".

A. That appears as if I said that—that would make it appear Nicht said the whole paragraph.

Q. You read to me what you contend——

A. This is what I think I said. There is no quote, therefore this looks like my answer: "Like you I would like to proceed with speed but great as my desire along this line may be I must also proceed with caution."

Q. That is Joseph J. Gorman talking?

A. I think so.

Q. You also think that Joseph J. Gorman is saying: "Setting up an operation like this cannot be done over night."?

A. That is right.

Q. That is Joseph J. Gorman talking?

A. That is right.

Q. Is Joseph J. Gorman also saying: "We have to decide what type presses are needed, what arrangements can be made with unions, which transportation companies and last but not least what arrangements can be made with mill."? Is that Joseph J. Gorman talking?

2546 A. Yes, sir.

Q. Now, you have a quotation mark after "mill"?

A. Correct.

Q. That mark is incorrect?

A. What I said in that paragraph means, over and over again——

Q. My question to you is whether that quotation mark is incorrect?

A. That is correct.

Q. The quotation mark shouldn't be there?

A. No. I said that we have to get the presses, we have to make arrangements with the mill.

Mr. BERNSTEIN: If your Honor please, I show the Court the original document and I invite the Court's attention to the fact that except for the first two sentences and two words in the second sentence of the first paragraph, the entire paragraph is quoted. That would indicate from reading the document that Mr. Gorman is saying that was what Mr. Nicht reported to him.

His testimony on the stand is that he thinks the quotation is in the wrong place, that some part of that is Joseph

2547 J. Gorman talking and not part of the quotation. I am trying to ascertain from this witness what part of that first paragraph that appears in quotes is not a quotation of what Mr. Nicht said but actually what Mr. Gorman said to Mr. Nicht.

The COURT: We don't have Nicht's letter of the twenty-sixth anywhere?

Mr. BERNSTEIN: Well, I don't know, I don't have it in this group.

The COURT: If we have it—

Mr. BERNSTEIN: I will put it into the record. We have always had trouble getting those documents in.

The COURT: For the purpose of only perhaps determining what Mr. Nicht said, what comes from his letter. It would clear it up.

Mr. BERNSTEIN: If we have that letter I will offer it. That was only preliminary to what I wanted—

The COURT: All right.

2548 By Mr. BERNSTEIN:

Q. Now, Mr. Gorman, before I was interrupted I was going to this second paragraph, which is clearly Joseph J. Gorman's language isn't it? Is that Joseph J. Gorman's language?

A. Yes, sir.

Q. Is the rest of the letter Joseph J. Gorman's language?

A. I presume so.

Q. Is there any doubt in your mind?

A. I don't see any reason for doubt, no.

Q. Mr. Gorman says: "Now let us take each item separately." Are you referring to the items Nicht was saying to you?

A. I don't know whether I was referring to what he was saying to me or what I was saying to him. If I wrote the second paragraph, I am satisfied to go ahead with it.

Q. Your letter continues as follows: "First and most important we need to be certain of the mill contract, that is, the

source of supply." Now, I don't propose to read the rest unless you want me to.

A. Read the whole thing. I think you should read the whole thing, including the last paragraph.

Q. I intend to read the last paragraph at a later time.

The COURT: Read it.

2549 Mr. BERNSTEIN: I will read it now.

By Mr. BERNSTEIN:

Q. "We know that as of May 26th the mill people was just as anxious to sell to us as we were to buy. I haven't noticed any change in attitude since. I had hoped to get to Birmingham this week, just for general conversation with Mr. Watt about what terms he had in mind, but when I called to make the date he had a previous engagement in Florida. I suppose that Mr. Watt may be somewhat surprised when he learns that International Color Printing Company and King Features are not one and the same, and then again he may not be surprised. Certainly he and the other directors will want to know that if they make a contract with us it will be practically the same as making it with King." When you say, "with us" you mean International Color?

A. Yes.

Q. Resuming the quotation: "Perhaps we will get some line on the mill thinking when you and I talk with Mr. Wakeman in New York about August 18th." The next paragraph I don't propose to read, but you discuss labor and all that is necessary to make arrangement with the labor union in order to open the plant, is that correct?

2550 A. Yes.

Q. In the next paragraph you talk about press equipment and you talk about what you had discussed about rebuilding presses which you obtained from Baltimore, is that correct?

A. That is correct.

Q. That isn't the 2022 press?

A. No.

Q. Then you talk about how long the work will take, you talk about what presses are needed, and then in the last sentence you say: "The kind of presses we use depends on the kind of work available and, as you know, our southern work consists of mostly small runs with many plate changes." Then you say: "I would like to get all of this planning behind me

and therefore I am going to proceed just as rapidly as possible.

A. Whereabouts are you?

Q. In the first full paragraph on page two.

A. The first full paragraph on page two? What line?

Q. The first paragraph is headed "Regarding press equipment", and the next paragraph is what I am now reading: "I would like to get all of this planning behind me and therefore I am going to proceed just as rapidly as possible." Is that correct?

A. Yes.

2551 Q. Your last paragraph talks about flexibility, and at a later time this morning I represent to the Court that I will read this paragraph, go back to the details of it. The last sentence in that paragraph says: "Please be sure that I am giving every waking moment to development of plans for speedy operation in the south."

A. If you are going to read the last sentence I insist you read the whole paragraph.

Q. All right, I will take the time of the Court to read it now. "Regarding flexibility; when we speak about flexibility for 10's and 14's we have in mind two things, flexibility of equipment and also flexibility of union contracts." When you talk about 10's and 14's, you mean 14 and 10-page standards?

A. Yes.

Q. Later on in this document you talk about 8's and 20's and 8-page tabloids and standards; what are you talking about?

A. The same thing, units of 4.

Q. You are referring to color comic supplements?

A. Yes.

Q. You continue on saying: "In Peoria we do print 12's and we do print some 10's but we cannot print 14's in Wilkes-
2552 Barre we are now printing 10's, 12's, 14's and 20's so it is not a case so much of flexibility of equipment as flexibility of contract." What do you mean by that?

A. A union contract, when we printed a 14-page section, called for the same number of men as when we were printing a 16-page section.

Q. And then you say: "Also, you must keep this in mind and you must believe me, it is most important that we be able to print 4-page standards, 8-page tabloids, 8-page standards, etcetera, and also be prepared to make large number of plate

changes. Buffalo—" you are talking about Greater Buffalo?

A. Yes.

Q. "Buffalo may print one or two 8-page standards, I don't think either Buffalo or Dunkirk is printing any at this time." Again, you are referring to Greater Buffalo Press plant at Dunkirk and at Buffalo?

A. Right.

Q. "They are not printing any 4-page standards and the only 8-page tabloids they handle are those which fit together with a few plate changes. Therefore, we apparently have flexibility for certain things that Buffalo does not have." Do you mean International has flexibility for certain things Greater Buffalo doesn't have?

2553 A. For a slight percentage of our work we had flexibility Buffalo didn't have. I meant Dunkirk, Buffalo had it.

Q. Did you mean International was a better competitor to Buffalo?

A. No, absolutely no.

Q. I will resume the reading: "But in the long run there is no doubt that Buffalo has greater flexibility of contract and probably greater flexibility otherwise. We are doing the best we can with what we have to work with and with the kind of profit that we are able to make. We are keeping in mind these facts; you are anxious to get started as soon as possible for psychological reasons as well as for reasons of safety. You want to get the greatest flexibility possible. We want to do both things and we also want to work out a contract which will put us in better shape to do these things than we have been in the past."

A. That is the crux of the whole thing.

Q. "Please be sure that I am giving every waking moment to development of plans for speedy operation in the south." Now, Nicht was always demanding of King—excuse me—Nicht was demanding of International greater flexibility, that is, the ability to print different size sections, as was required?

A. Correct.

2554 Q. And Joseph J. Gorman believed that with proper financing from King, with proper prices to International, that International could create a plant in the south that, together with Wilkes-Barre and Peoria, would provide the flexibility that King was seeking, is that correct?

A. Not entirely, no. It is much like changing from a male to a female after birth. We started with the presses set up wrong, and it is impossible to change them fully thereafter to give complete flexibility.

Mr. BERNSTEIN: I offer in evidence, your Honor, P-120.

Mr. STEVENS: Objection on behalf of NEA.

The COURT: That is the letter he was reading from, any objection?

Mr. RAICHLE: No.

The COURT: Received.

(Thereupon Plaintiff's Exhibit P-120, previously marked for identification, was received and marked in evidence.)

By Mr. BERNSTEIN:

Q. I offer in evidence P-107, that is the amendment to the newsprint contract between Coosa and Hearst.

2555 Mr. STEVENS: Objection.

The COURT: You have no objection, Mr. Raichle?

Mr. RAICHLE: No.

The COURT: I understand, Mr. Stevens, your objection is that these things are between others than yourself?

Mr. STEVENS: Correct.

The COURT: It would only be pertinent if conspiracy was established?

Mr. STEVENS: Correct.

The COURT: And you were involved by a finding?

Mr. STEVENS: Correct.

The COURT: I will receive it subject to those findings, whatever they may be.

(Thereupon Plaintiff's Exhibit P-107, previously marked for identification, was received and marked in evidence.)

By Mr. BERNSTEIN:

Q. Isn't this the fact; that two months before you, Joseph J. Gorman, concluded the transaction whereby Greater Buffalo purchased the stock of International, International had
2556 drawn plans for a 30,000 square foot building in Sylacauga and that you, Joseph J. Gorman, told King that you can't proceed with the purchase until King signed a long-term contract for a price that would continue dividends to the owners, as well as guarantee to amortize the cost of the plant within a reasonable period?

A. Yes, sir.

Q. Isn't it true that two months before you, Joseph J. Gorman, concluded the transaction whereby Greater Buffalo purchased the stock of International, in behalf of International you authorized the Chamber of Commerce in Sylacauga to purchase a site there, isn't that true?

A. I don't recall that I authorized them to purchase a site. no.

Q. Is it true that several weeks before the transaction was concluded whereby Greater Buffalo purchased International, you, Joseph J. Gorman, representative of International, told the Chamber of Commerce to proceed with grading the road?

A. That is right, I did.

Q. And isn't it a fact that after the purchase, you, Joseph J. Gorman, as International's representative, told the people in Sylacauga that they would have to sell bonds in an amount which would give International a satisfactory building and then lease the building—

A. When did I do this?

Q. After the purchase?

A. What date?

Q. That was—

Mr. RAICHLE: If there is a letter, show it to him.

Mr. BERNSTEIN: I want the Court to see the whole picture before we are involved in minute details of this transaction.

By Mr. BERNSTEIN:

Q. That was September 27, 1955.

A. That was after the sale?

Q. That is correct. Excuse me, the grading is—

A. I told them to grade, they begged me to tell them to grade. They wanted us down there, and I wanted to keep the land, I wanted to keep whatever promise I could get for the paper, in the hope that either King or the Govins or Buffalo or somebody would come through with the cash we required.

Q. Isn't it true that later it was decided that you would build and finance your own building and receive a gift of land from Sylacauga because it would be cheaper?

A. I don't think it was quite that way, no. In July of 1955 we had no commitment to Sylacauga, none whatever. We were—

Mr. RAICHLE: I'm sorry, I couldn't hear.

The WITNESS: In July of 1955 we had no commitment to Sylacauga. I wrote 30 letters on July 15, 1955 to various cities

in Tennessee, asking them for the same concessions that we hoped to get from Sylacauga. I got answers back from at least 20. That was after the sale took place, after I talked to them about grading the land, and they knew I was in Tennessee. They talked to me while I was there, and they hoped that we would not find anything that would keep us in Tennessee rather than coming back to Alabama.

Mr. RAICHLE: You were looking for a place in the south.

The WITNESS: Somewhere, and we didn't commit ourselves to Sylacauga. We could get paper elsewhere, by this time we were not getting a special price.

2559

By Mr. BERNSTEIN:

Q. Is it a fact that the Industrial Development Board of the City of Sylacauga accomplished what you asked them to do, of having the city deed the land as a gift, and that International proposed to build a building and accept the land, and at the last minute you requested that Sylacauga deed the land to Greater Buffalo Press with the understanding that it would be leased to International?

A. I have no recollection of that.

Q. Do you recollect at that time that it was your intention that International would operate the plant and that it would print King Features down there just as it was doing in Wilkes-Barre?

A. There was, for a brief period of time, a thought that we would operate the plant. As a matter of fact, I think I was president of the company for a while, if there was such a company. That was changed shortly, I immediately got out of the picture.

Q. Was there a decided change after the Court issued the injunction in 1961?

A. At that time I was completely out of it, long before that.

Q. Let's get the details of some of these things and refresh your recollection. Now, I show you P-122 for
2560 identification——

Mr. RAICHLE: What is the date of that?

By Mr. BERNSTEIN:

Q. P-122, dated April 11, 1955, and it is a letter from you to Mr. Nicht, and this was before—April 11, 1955 is before Greater Buffalo acquired International's stock?

A. Yes.

Q. You say to King Features: "Since you are going to meet with Mr. Watt next week it has occurred to me that it would be a good idea for you to have some up-to-date information on probable newsprint requirements in 1956 and 1957. I believe your contract calls for approximately 2500 tons in the year 1956 and then 8000 in 1957." Are you talking about the contract between Hearst and Coosa River Newsprint?

A. I guess so, yes.

Q. Then you send him a schedule showing runs and other details concerning that. I don't propose to read that now. Then in the next paragraph you say: "Here is a brief review of what we are doing along mechanical lines right now. As you are fully aware we have two plants in Wilkes-Barre which we call the Parsons and the Sheldon plants. The Parsons was 2561 the original plant. It now contains five single width presses. In our Sheldon plant we have five double width presses and one single width press." In the next paragraph you tell him about your plans about moving those—

A. Just a minute. There is no doubt we were making plans to go there if we could get a contract.

Q. You are making detailed plans now?

A. Certainly we were making plans.

Q. Look at page 2, the last—the next to last sentence: "As you already know we have long ago fully considered the sites in the Coosa River area, we have made arrangements with the Sylacauga Chamber of Commerce, we have plans drawn up for building about 30,000 square feet, as against a much larger building which Greater Buffalo is planning to erect at Lufkin, but we cannot proceed with purchase of ground in Sylacauga nor with the letting of contract for building there until we have concluded arrangements with you for the signing of a long-term contract which will continue dividends to the owners as well as guarantee amortization of cost of the new plant within a reasonable period. As you can well understand no bank is interested in advancing money except on the basis of a sure return of same. The purpose of this letter is not so much to discuss contract as to keep you advised as to what 2562 progress we are making. Will write further, probably Tuesday or Wednesday, about other features which I do not have time to discuss at this writing." Then in—

The COURT: Wait a minute, excuse me. Now, as I hear that, Mr. Gorman is telling King, Nicht, that he is proposing to have

a plant down in Sylacauga in hot competition with Greater Buffalo at Lufkin. What is wrong with that?

Mr. BERNSTEIN: That is good. That is why—

The COURT: This is the time when Nicht gave him a horse laugh, that is what he gave him as a proposal, as far as money, as I get it. Then in due course that Sylacauga thing winds up in Greater Buffalo Press. But do you think that letter evidences some conspiratorial tendency at that time?

Mr. BERNSTEIN: This evidence isn't used to evidence conspiratorial intent.

The COURT: I thought you were always holding here from the beginning of the interest of International in the 2563 south, it was an under the table deal going on.

Mr. BERNSTEIN: The under the table deal was the deal between Nicht and Koessler, not between Gorman, representing International, and Koessler. Gorman, as International operated, considered himself Greater Buffalo's competitor. Gorman, as far as he was concerned, if the competitor bought him out and was able to continue him on as president and continue to get the revenue in there, and continue King's printing, continue to operate the plant the same as before, Gorman was far happier than he would be pinching pennies with Nicht and being at the mercy of Nicht.

The COURT: I thought you were always considering Gorman as part and parcel of the plot?

Mr. BERNSTEIN: No, the plot is between Koessler and Nicht. Joseph J. Gorman is the International plant operator 2564 who is trying to operate this plant as a separate entity, considering—

The COURT: All I wanted to say; you agree that when that letter was written Mr. Gorman was indeed striving to save his own hide and his fellow man, and pay Mazie her stipend, right?

Mr. BERNSTEIN: Absolutely. At the same time—this is most significant, your Honor—at the same time he was, whether knowingly or not, and I will say unknowingly for the purpose of this lawsuit because I don't propose to offer any evidence otherwise; unknowingly at the same time he was feeding the fuel of this conspiracy.

The COURT: I wanted to know whether you thought this man was part of some heinous plot at that time?

Mr. BERNSTEIN: No, no, no, he is proceeding along with plans he made before.

The COURT: I have it now. All right.

By Mr. BERNSTEIN:

Q. Now, the letter that I just read was dated April 11, 1955.

Ten days later, on April 22, 1955—

2565 The COURT: I have been going since seven, frankly, if I am weary there is not much use in my listening. Let's take about fifteen minutes and we will go on until one o'clock. (Thereupon the Court was in recess at 11:05 a.m.) (Proceedings resumed, pursuant to recess, commencing at 11:35 a.m.)

The COURT: Well, gentlemen, I thought we would run until about one o'clock.

Mr. BERNSTEIN: I offer in evidence P-122. That was the letter about which the witness just testified.

Mr. STEVENS: Objection on behalf of NEA.

(Thereupon Plaintiff's Exhibit P-122, previously marked for identification, was received and marked in evidence.)

By Mr. BERNSTEIN:

2566 Q. P-122, Mr. Gorman is your letter to Mr. Nicht, dated April 11, 1955, two months before Greater Buffalo's acquisition of International. I show you P-123 for identification. P-123, dated ten days after P-122, is a letter that you wrote to Jack Nealeans, Secretary of the Chamber of Commerce, Sylacauga, Alabama, dated April 22, 1955, and you say: "Dear Jack: I am writing this following our telephone conversation of this morning when I told you that we had definitely selected Sylacauga as the location for our southern printing plant and that you should go ahead with the purchase of Site Number 1. I told you that we wished to keep the matter confidential until such time as we can clear statement with King Features Syndicate and you advised that you might find it necessary, in view of this fact, to get an extension of the option for another two weeks or thirty days. I wish to emphasize, however, that we do not desire to take a chance on losing the site. In other words, we want the matter held as confidentially as possible until such time as we can clear through King Features but this is definitely your authority to go ahead on our behalf with the purchase of the site we selected." So that, Mr. Gorman, on April 22, 1955, it is true that you authorized the secretary of the Sylacauga Chamber of Commerce to go ahead on Internationals behalf to purchase the site that you selected, is 2567 that correct?

A. That is correct.

Mr. BERNSTEIN: I offer P-123 in evidence.

Mr. STEVENS: Objection on behalf of NEA.

The COURT: You have no objection?

Mr. RAICHLE: No objection.

The COURT: I will assume you have none unless you say so.

Mr. RAICHLE: I have no objection.

The COURT: Received.

(Thereupon Plaintiff's Exhibit P-123, previously marked for identification, was received and marked in evidence.)

By Mr. BERNSTEIN:

Q. Several weeks before Greater Buffalo purchased the stock of International, according to P-114 in evidence, which is your letter to Mr. Nealeans, Secretary of the Chamber of Commerce of Sylacauga, you write this: "Dear Jack: I suppose it seems that we are somewhat dilatory in our move to give you a statement regarding location in Sylacauga but actually there are many things involved which are difficult to fully explain to persons not familiar with the newspaper readyprint situation. Confidentially, we are going to Sylacauga.

We may not be able to give you a full statement for the public by June 7th for the reason it is necessary for King Features Syndicate to clear up certain contractual matters with newspapers beforehand. I have every hope that I will be able to contact you definitely by June 7th, but if not I wish to confirm what I said in previous letter that you should purchase the land. Also, as per our telegram of this date, please proceed with the grading in accordance with our understanding that the road will be lowered so that at no point will the roadway be more than from three and one-half to four feet higher than the industrial site. I wish to impress upon you that this is a very responsible company——" you were talking about International, were you not?

A. Yes, sir.

Q. "And King Features Syndicate is fully responsible and just between the Sylacauga Chamber of Commerce and International Color Printing Company I can confidentially state that we are going to locate in Sylacauga and if I cannot give you a full statement by June 7th, it is a delay which simply cannot be avoided."

A. I was stalling.

2569 Q. Sir?

A. I was stalling, even to the point of telling him to go ahead with the site.

Q. Why?

A. Because I had no definite plans of what we were going to do. He pushed me and came to Wilkes-Barre and nagged at me, and I finally said, "All right, go ahead."

Q. Now——

A. I had no definite plans as to press equipment, money, contract, newsprint.

Q. Now, I want to get your state of mind, your attitude toward dealing with people. Here you told the Chamber of Commerce to purchase the land, you told them to incur expenses for grading the land, and at that time you were just leading them on, is that correct?

A. They were satisfied to do that, take a chance. They knew that. Confidentially, in conversation with them they knew all about it, they knew our circumstances.

Q. Did you tell them you didn't mean what you said in the letter?

A. No, I told them I hoped we could.

Q. You were telling them as far as you were concerned everything was going through?

A. I still was telling them to hold back, I was not sure.

The COURT: I want to ask you, do you now claim
2570 that image of Gorman has now changed?

Mr. BERNSTEIN: No. I say Gorman is not participating in the conspiracy.

The COURT: Why did you ask him that? He is trying to salvage for himself and, he said previously, he had a lot of concern with long and faithful workers, and he has this constant drain on him for money. Now, I don't understand why you attack him at this point as though he knows something.

Mr. BERNSTEIN: My purpose, Your Honor, is to demonstrate through this witness's testimony that he colors his testimony to suit the occasion, that if he thinks it will be more persuasive——

The COURT: I am talking about then, what he then was trying to do.

Mr. BERNSTEIN: I contend he was—I disagree with the witness's statement—I contend that he then had every intention of going ahead with the transaction——

The COURT: And be competitive?

2571 Mr. BERNSTEIN: And be competitive with Greater Buffalo, yes.

The COURT: Maybe it is a matter of acoustics. I gathered from your talk to Mr. Gorman, your examination, that the image changed, he is now becoming a co-conspirator.

Mr. BERNSTEIN: No, Your Honor. I do not contend that he is a co-conspirator with Greater Buffalo at any time.

The COURT: He is doing his best to get something that will keep his job and keep his workers going and keep the family happy.

Mr. BERNSTEIN: And keep International in competition with Greater Buffalo, yes, sir.

Mr. RAICHLE: No. Why do you—I say this unreservedly, why do you make a flat misstatement of fact? This witness testified time and again that International was not in competition with Greater Buffalo, he testified that King Features was in competition with Greater Buffalo Press. Why do you
2572 misstate the testimony when you know the fact to be to the contrary?

Mr. BERNSTEIN: I know the fact——

The COURT: Here, gentlemen, I understand that. This is the working arm of King Features, the printing plant, International. I know all about that. There is no reason to get excited. I wanted to know what you thought of Gorman, whether you are trying to give me the impression—I had the impression suddenly you thought the hue changed.

Mr. BERNSTEIN: No. Let me explore that.

By Mr. BERNSTEIN:

Q. At this time, this is June 3, 1955, the sale of Greater Buffalo was June 16, 1955——

Mr. FELDMAN: June 25, 1955.

By Mr. BERNSTEIN:

Q. The sale of International was June 25, 1955. Here we are talking about June 3, 1955. At this time you were negotiating with King Features for a contract, is that correct?

2573 A. Yes.

Q. Clarify this, please, in all honesty. Were you contracting with King Features knowing that Greater Buffalo was going to acquire International and therefore Greater Buffalo would own the stock of International and have a contract with King?

A. I did not know until Greater Buffalo actually bought the stock.

Q. So that your negotiations with King at this time was not to get the same price as your preceding contract, but to get a price under a contract that would give the Govin family the same dividends and would permit sufficient revenue to finance a plant down south, is that correct?

A. That is right.

Mr. BERNSTEIN: Did Your Honor get the last——

The COURT: Yes, I did.

By Mr. BERNSTEIN:

Q. Now, according to P-115 in evidence, which is your letter to Mr. Frank Nicht, this is dated September 27, 1955, and this is after Greater Buffalo has actually purchased the International stock, here is what you tell him: "Dear Frank: Regarding the announcement made in Sylacauga by me. It was
2574 primarily intended for Sylacauga consumption and I made it clear at that time that we had chosen Sylacauga as the site of the southern plant and would build a plant there 'provided final financial and building plans can be eventually agreed upon.' In my talk to the people at Sylacauga I emphasized fact that they would have to sell bonds in the amount which would give us a satisfactory building and they would also have to give us a lease which would be satisfactory. We are committed to Sylacauga provided that our conditions are met, but before we agree to sign lease we must know that people of Sylacauga will give us the kind of building we want, and they cannot do anything about this until after our building plan has been completed and bids received. Actually I don't think there should be too great a hurry about publicizing generally our southern plans. I mean that we should not put too much publicity in Editor and Publisher, newspapers and other publications. Certainly there seems no reason why you should not contact all of the newspapers involved and notify them that you are the selling agent for International Color Printing Company and that when a southern plant is finally established, all sales for work produced by International Color Printing Company will be in the hands of King Features Syndicate. I
2575 just want you to know that no final papers have been signed for a Sylacauga plant and none can be signed until after building plans have been completed and lease terms

agreed upon." You are then talking about a lease from the people of Sylacauga to International, is that correct?

A. That is correct.

Q. Now P-124 for identification is your letter to the Chamber of Commerce on March 29, 1956, and this is a few months shy of a year after Greater Buffalo has acquired the stock of International, and again International Printing Company is writing to the Chamber of Commerce, and you say: "Dear Jack: We have, of course, received your proposed agreement and your request for more information from International Color Printing Company and Greater Buffalo Press. We have gone over the agreement carefully and both Buffalo and Wilkes-Barre—" —were you referring to Greater Buffalo Press and International?

A. Yes, sir.

Q. "Were considerably disturbed by the fact that we would have to pay 5% instead of 3½% which was the figure originally offered. No doubt, you realize this difference in interest amounts to almost \$100,000 on the principal involved.
2576 This excess payment, which will result from the difference between 3½% and 5%, is so great that we have decided it would be much better for us to own our building and with this in mind we plan to start negotiations either with insurance companies down your way or with the local banks with the view to obtaining a mortgage very similar or better if possible than the one you had in mind. We have the necessary money for the down payment and we would like to talk to you and Mayor Howard concerning the turning over of the land to us with the understanding that we will start erection of plant in Sylacauga." When you say "us", do you mean International?

A. International was at that time a subsidiary of Greater Buffalo, and by that time Greater Buffalo already told us to purchase Press 2022 and put it wherever would be the best site. When I was speaking then I was not speaking of the old International Color Printing. I am speaking of International as a subsidiary of Greater Buffalo Press.

Q. "Will you let us know if you can come to Wilkes-Barre and when? Since the City has been so cooperative and since Mayor Howard has shown such a deep interest in our plans. I sincerely hope that he will be able to make the trip with you."

2577 A. All that proves is that at that time we hadn't even decided on any kind of arrangement with Sylacauga.

Q. Do I understand this letter to mean that the Secretary of the Chamber of Commerce had under consideration that the people of Sylacauga would sell bonds, they would build a building and lease the building to International, is that correct?

A. Yes.

Q. Then you learned that the money they would have to pay, the interest on the bond, was 5% rather than 3½%, as you believed, and you believed the lease would be so much higher because of that, is that correct?

A. That is right.

Q. So therefore there was a change in the plans and it was decided that the building would be built by International as a subsidiary of Greater Buffalo Press?

A. At that time, yes.

Q. And that International would do its own financing through insurance companies and banks?

A. International and Buffalo.

Q. And that the plant would be operated by International, is that correct?

A. There was no—very vague, very indefinite about what would happen at that time. We would—we were
2578 going to operate under whatever arrangement Buffalo would outline. The plans we had in the beginning for a 30,000 square foot building, and so forth, were completely and absolutely worthless.

Q. And—

Mr. RAICHLE: And never adopted.

Mr. BERNSTEIN: I offer P-124 in evidence.

Mr. STEVENS: Objection on behalf of NEA.

(Thereupon Plaintiff's Exhibit P-124, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: I offer in evidence P-125 which is another letter from Mr. Gorman to Mr. Koessler on the same subject, just supplements the preceding letter. I won't take the time to read it at this time unless the Court wishes.

The COURT: The nub of all this, Mr. Bernstein, you are saying that even though Mr. Gorman was being used, if you will, as the apparent head of International; Hearst, that is,
2579 King, and Buffalo, Greater Buffalo, were designing to

monopolize the entire south at least, and other places, I take it, in the printing of these color sections?

Mr. BERNSTEIN: Yes, substantially correct, with one minor exception. They were conspiring that Greater Buffalo would monopolize the printing and King would share in the sale with Greater Buffalo.

The COURT: King would sell?

Mr. BERNSTEIN: Exclusive, there wouldn't be any—Greater Buffalo Press wouldn't do business with NEA or any other syndicate or anyone else, and Koessler was leading King on, and King was being led on by the fact that International, with whom it had been doing business all along, a virtually captive plant, was making arrangements with the people in Sylacauga to buy land and build a building, and King was led to
2580 believe that it was going to be the exclusive seller for all of the printing that International was going to do in Sylacauga.

The COURT: You further claim Koessler double-crossed—

Mr. BERNSTEIN: That is correct, but not at this particular time. He was leading them on.

The COURT: Mr. Raichle, I only ask these questions to get things on focus from time to time. If you would like to say something?

Mr. RAICHLE: No, I wanted to participate in an effort to clarify. Then, as I understand it, you claim that instead of a conspiracy between King and Koessler, you claim some course of action on the part of Koessler—when I say Koessler I mean Greater Buffalo Press—which would make King the victim and Koessler the culprit?

Mr. BERNSTEIN: I say that each one was the victim of each other, and in trying to—

Mr. RAICHLE: That is a funny conspiracy.

2581 Mr. BERNSTEIN: Yes, it is a very unusual kind of a conspiracy, Mr. Raichle. It is one in which Mr. Koessler is trying to seek self help, claiming he was the victim because he can't get the copyrights. Nicht, on the other hand, is claiming he is being the victim because he offered to go into this conspiratorial scheme with Koessler, at the same time Koessler was dealing with NEA unknown to King. That is what makes this conspiracy hard, that is why we need in this lawsuit to cure both situations, to prevent each one from being a victim of the other, and thereby protect the public.

The COURT: To go back to my opening remark when we resumed, I asked you about that. I said, "Just what is happening, are people healthy, I took off the restraint on Sylacauga, right or wrong, when I learned about this man at Southern
2582 Color sending copies of my decree around, et cetera."

Now, what do you think has happened that makes everyone a healthy printer and seller, if you will, of color comics by reason of anything I have done or you have done, or is that nature taking its course? What is his name?

Mr. BERNSTEIN: Hornady.

The COURT: Hornady apparently is doing all right. He hasn't had the windfall, at least in my judgment, that I thought he was trying to get. The other names don't come to me immediately, who you are trying to protect. I don't criticize you at all, I laud you for it if you thought there was something in the wind. They seem to be doing quite nicely.

Mr. BERNSTEIN: There is still a problem. I think the problem is this—

The COURT: This has succeeded; Sylacauga is going full tilt, Southern Color is going full tilt, the thing in Texas, Lufkin, is going full tilt, and I suppose Greater Buffalo is going full tilt. If this were the image today, I wonder if you would have launched this suit?

Mr. BERNSTEIN: Yes, we would have launched the suit because there is still another portion that your Honor hasn't touched on which needs to be cured, which is a cancerous situation, and that is the opportunity for other competitors of Greater Buffalo not to be in a position that Koessler is in and be at the mercy of the syndicates.

The COURT: Who is a potential, give me one?

Mr. BERNSTEIN: Acme on the west coast; Eastern in New England.

The COURT: Acme was a defendant here?

Mr. BERNSTEIN: No, your Honor.

The COURT: Pardon me. We had an officer from Acme here?

Mr. BERNSTEIN: No.

Mr. FELDMAN: On the injunction.

The COURT: You see, I want to know who is hurting and why.

2584 Mr. BERNSTEIN: I say there are four categories of people being hurt. Greater Buffalo is being hurt because—

The COURT: Greater Buffalo?

Mr. BERNSTEIN: Koessler testified——

The COURT: I don't assume they are going to complain Who else?

Mr. BERNSTEIN: But——

The COURT: They are defendants here waiting for me to either put the clamp on them or not. I don't think they are complaining. Give me your complaints.

Mr. BERNSTEIN: I don't have any complaints except the Government is the complainant here. Southern Color——

The COURT: I remember vividly that the cost didn't come up despite labor costs, and so forth.

Mr. BERNSTEIN: Southern Color is being hurt. Southern Color——

The COURT: That is Hornady?

Mr. BERNSTEIN: Yes.

The COURT: I asked you in the opening statement—
2585 maybe you didn't want to answer it then—I said, "Is Hornady getting along nicely?" I think you said yes.

Mr. BERNSTEIN: Well, he is under restraint, he doesn't have the opportunity to do the printing for any newspapers being printed by King or NEA without being coerced into the tie-in of the features. He is in the same position Mr. Koessler complains he is in.

The COURT: Right today?

Mr. BERNSTEIN: Right today. You can't cure that situation unless——

The COURT: Is that proof right now?

Mr. BERNSTEIN: We will prove that.

The COURT: When are you going to do this?

Mr. BERNSTEIN: Before Friday we will do this. This is the whole point.

The COURT: We have been together many times. I admit I try all kinds of cases and every day there is something new, as we remarked lightly this morning. I wondered if that was in the case?

Mr. BERNSTEIN: It is.

2586 The COURT: Already?

Mr. BERNSTEIN: No, it will be when we come to the tie-ins against NEA.

The COURT: I wondered if I had forgotten something.

Mr. RAICHLE: If your Honor please, I am consumed with astonishment at the statement of counsel. Let us remember and never forget that he, representing the Government, has entered into a consent decree which consents, as far as King is concerned, to the conduct that he now criticizes. If it exists today, it exists because of him.

Mr. BERNSTEIN: I deny that categorically.

Mr. RAICHLE: It is the fact and you know it.

Mr. BERNSTEIN: I do not know it, it is not the fact, I deny it. Unless the Court wants to go into it, I do not prefer to.

Mr. RAICHLE: The Court knows it, the Court has knowledge of its own decree——

Mr. BERNSTEIN: I deny it.

The COURT: Gentlemen, I will hear that kind of
2587 discussion in due course. I suppose this happens to you elsewhere, where the Court interrupts. I am the fact finder. I couldn't do this before a jury. I must do certain things, I have certain impressions like a juror, and I ask you from time to time to talk with me. All right.

Mr. BERNSTEIN: I understand, your Honor.

Mr. RAICHLE: I wish he would state once and for all which of the many shifting and ever changing positions he now takes. Does he say there is a conspiracy existing today between King and Greater Buffalo Press?

Mr. BERNSTEIN: Your Honor——

Mr. RAICHLE: Yes or no.

Mr. BERNSTEIN: If your Honor wishes me to answer——

The COURT: I would rather get on with the witnesses because we, as lawyers, can fit into things better than any of the
2588 witnesses who have their own problems. Our business is being here, theirs isn't, except when required. All right.

By Mr. BERNSTEIN:

Q. P-118 in evidence consists of a letter dated June 26, 1956, from you to Mr. Cecil Waldrop, chairman of the Industrial Development Board of Sylacauga. There is attached to that a memorandum to Mr. Gorman, dated June 18th, that is a two-page memorandum. In your letter—this is a year and a day after Greater Buffalo purchased the stock of International—you say to the Industrial Development Board of Sylacauga, as president of International: "At the last meeting of negotiations which were held in Wilkes-Barre with your representative Mayor Ed J. Howard and Jack Nealeans——" —that is the same

Jack Nealeans that was Secretary of the Chamber of Commerce?

A. He was.

Q. You had been negotiating with him for a site for how long; since 1954?

A. Approximately, yes.

Q. "—and subsequent meetings held in Sylacauga, we were offered as a gift from the citizens of Sylacauga a clear title deed to a 3.64 acre plot of ground located at 908-934 West Fort Williams as now graded.—" —that is the grading they did 2589 that you had said a year earlier to proceed with?

A. There might be some additional grading as a result of the fact that our plans were null and void and worthless. New plans from Buffalo possibly called for a different grading. Our plans were out of the picture. Had we erected a building, as we had planned, or sent presses down there, we wouldn't have lasted a year.

Q. When you say "we" you mean International?

A. Yes.

Q. Then I resume reading: "—with agreed upon power, gas, water and sewage facilities available upon this property. In consideration for the gift of land we agree to proceed within ninety days, or as soon thereafter as possible, to put up a plan building of approximately 45,000 square feet and generally the same as the B & B drawings and specifications of which you have copies at our own expense and by means of our own financing." You mean International was going to—

A. International, as a subsidiary of Greater Buffalo.

Q. "We will use said site and building to operate a color printing establishment which we expect will give steady employment to at least 100 people." You mean International as a subsidiary of Greater Buffalo?

A. Yes.

2590 Q. Then you said—there is a last paragraph that I won't read. Then on the—excuse me—on the second page of P-118 there is a letter to a Mr. Waldrop, Industrial Development Board of the City of Sylacauga—can we have that marked P-118A in evidence?

(Thereupon letter referred to was marked P-118A and received in evidence.)

Mr. BERNSTEIN: I misdescribed P-118. P-118 consists of these two letters dated June 26th, and a copy of the June 18th

memorandum to Mr. Gorman.

By Mr. BERNSTEIN:

Q. Now, inviting your attention to P-118A in evidence, dated June 26, 1956, you say: "Dear Mr. Waldrop: Supplementing our letter of June 26th, concerning the plot of ground situated at 908-934 West Fort Williams which you are giving to us and upon which we propose to build our printing plant, be advised that we wish title to be made in the name of our parent company, The Greater Buffalo Press, Inc., Buffalo, New York. The Greater Buffalo Press will own the land and the building and will lease the same to its wholly owned subsidiary, The International Color Printing Company, for the operation of the printing business which will be in the name of The International Color Printing Company." Is that correct?

A. For the moment we thought that was the way we would proceed.

Q. As of that time, June 26, 1956, International had a contract with King which provided that International would print for nobody else except King, unless with their permission?

A. That is right.

Q. So that if your plan was going to go through, International would operate the plant at Sylacauga, and then the only one, contractually, it could print for there would be King?

A. According to the contract.

Q. Is that correct?

A. Yes.

Q. Did you tell that to Nicht at the time?

A. I don't recall discussing—I talked to Nicht about so many things on so many occasions—I have no idea of many things I said to Nicht.

Q. Now, at that time it is true, is it not, that you, 2592 Joseph J. Gorman, considered International a separate plant, separate and distinct from Greater Buffalo Press, operated independently, even though it was a subsidiary of Greater Buffalo Press, isn't that correct?

A. To some extent. In other words, I operated the Wilkes-Barre plant with very little interference from Buffalo. What I got from Buffalo was advice as to equipment, changes in equipment, and so forth, but they let me run the thing pretty much as I saw fit.

Q. Does that mean in regard to the prices that you were charging King?

A. Generally speaking, yes. We quote our own prices for determining a price on an individual run. It was entirely different in Buffalo.

Q. Is this a fair summary; that your relationship with King as a printer, International, continued on pretty much the same after Greater Buffalo acquired International as it had before?

A. Yes, Nicht was just as tough afterwards as before.

Q. For all external appearances, everything was pretty much the same?

A. Externally, yes.

Q. Now, is this a correct summary of the situation; Dixie Color Printing Corporation—now by these questions
2593 I am trying to get your present recollection and I will elaborate on this with documents and we will go into details—initially, is it your present recollection that Dixie Color Printing Corporation was organized on or about April 18, 1957?

A. I don't know.

Q. Is it your recollection that until 1961, when this Court issued an injunction prohibiting International's assets from being used in Sylacauga, International's employees implemented Greater Buffalo's policies by doing everything necessary to prepare the Sylacauga plant for operation, including the installation of equipment?

Mr. MOORE: I object to the form of the question.

The COURT: Yes. I remember those days of the argument of the injunction, and kind of a slender man—I can't think of his name—went down there. Did all the employees facilitate in every way, is that what you said?

Mr. BERNSTEIN: I said it was International—that even though after Dixie Color was organized, even though Dixie

Color was organized—do you know whether or not Dixie
2594 Color Printing is operating that plant today?

The WITNESS: Yes.

Mr. BERNSTEIN: It is?

The WITNESS: Yes.

Mr. MOORE: We have a long record on this case, you were not here, but we took testimony before his Honor for two days of just the things you were bringing out. If you want to put it in, put it in.

Mr. BERNSTEIN: If your Honor please, I am trying to present these facts in a fashion so that the Court can see the whole

picture as it goes along. Some of the facts in the record have been done before and are not in this record. They are relevant to what I am going—

Mr. MOORE: I am trying to help out. We have gone into it.

The COURT: What was done down there, there was some alert fellow, about 40, thin, who was kind of a key man, that went down there and he and others went in there and took care of housing and many other problems, all with a view of starting up.

Mr. BERNSTEIN: That is right. So that after Dixie Color was organized, I gather that Greater Buffalo will stipulate that International—

The WITNESS: Joe Clinton.

Mr. BERNSTEIN: He was there for a year?

The WITNESS: He didn't go until 1960.

Mr. BERNSTEIN: He was there for a year, that was after Dixie was organized?

The WITNESS: He is still there.

Mr. BERNSTEIN: He was there as an International employee for a year?

The WITNESS: Whether he was on our payroll for that year or not I don't recall, but he was really there as a Buffalo employee.

Mr. BERNSTEIN: Will defendant stipulate he was an International employee—

The WITNESS: Up to 1960.

Mr. BERNSTEIN: —and Greater Buffalo later reimbursed International for—

Mr. MOORE: Defendants will stipulate the entire record, which the Government participated in making before this Court for three days, where testimony was taken on each of these subjects at great lengths and all these documents you are going into. That record—we will stipulate the whole record.

Mr. BERNSTEIN: Well, I accept the stipulation. Then we will incorporate, as part of the record—

The COURT: There wasn't any question, as I recall it, it's a long time ago, that when the thing began to hum, Clinton and others went at it full tilt to make it go and hum good and hard.

Mr. BERNSTEIN: But the point I am trying to ascertain through the inquiry of this witness is International's role in this thing. International started in—

The COURT: Go ahead, I don't know anything about it.

Mr. BERNSTEIN: That is what I want to know.

Mr. MOORE: If we are going to stipulate in
2597 the other record, I am not going to stipulate it in and have you do it all over again.

The COURT: Do this—excuse me, gentlemen—do this, because I know indeed you were not here, Mr. Bernstein, Mr. Feldman was, have you got it with you?

Mr. BERNSTEIN: Yes.

The COURT: Look at it and see if it suits your purpose or view.

Mr. BERNSTEIN: We have. There are certain parts that the Government considers irrelevant to this proceeding at this time. The Court was focusing on other points at the time. The only—

The COURT: You don't want some of the stuff that is in there?

Mr. BERNSTEIN: I have no objection to the Court considering it. I will contend that it is irrelevant. I don't want it to be charged that the Government is offering this claiming relevancy.

The COURT: You are stipulating, both sides, if
2598 Clinton and others were recalled they would now so testify?

Mr. BERNSTEIN: Right.

The COURT: There is no objection to relevancy, as I get it, that has any bearing. You want me to take that testimony as part of the Government's major case?

Mr. BERNSTEIN: Yes, with this reservation, that there are parts of that testimony that the Government does not wish to offer. It has no objection to the defendant offering it and being received, but it doesn't want to be, at a subsequent time, charged with estoppel, that this is information that the Government itself offered in its case. Otherwise, it has no objection to the Court considering this evidence as long as it preserves its rights to argue some of these things were not so or in conflict with other things that were said, and so forth. With that
reservation, the Government has no objection to
2599 putting that in evidence.

Mr. MOORE: Maybe I'm a little stupid——

The COURT: Can't you sit down and comb that nice and fine between yourselves? I don't want to take so much time. Do you want to consider that position?

Mr. BERNSTEIN: It will take more time than discussing this. I had three more minutes, and if I hadn't been interrupted——

The COURT: All right. The stipulation is withdrawn now, is that correct?

Mr. BERNSTEIN: No, I will abide by the stipulation.

The COURT: Wait a minute. You want to go further and beyond. You, I assume, want to reserve your offer of a stipulation. Let's hear the question, maybe you will go along with it.

By Mr. BERNSTEIN:

Q. To summarize it, Mr. Gorman, International prepared the press in Wilkes-Barre?

A. Under Walter Koessler's direction.

Q. International sent six men to Sylacauga for a year 2600 to set up the plant, is that correct?

A. And Greater Buffalo paid their wages.

Q. Paid to International the wages, is that correct?

A. We paid the wages, Greater Buffalo paid us.

Q. When you say "we" you mean International?

A. International, of course, I didn't do it.

Q. Prior to Dixie's organization, International purchased the press from Hearst and was later compensated by Greater Buffalo, is that right?

A. At Walter Koessler's direction.

Q. What do you mean?

A. The presses we had in mind, I told you before, were worthless. There was another press in Baltimore which would suit his plans better.

Q. That was at a Hearst plant?

A. That was at a Hearst plant.

Q. Who located it?

A. I did.

Q. And prior to the time that you located that press at Hearst, Koessler never bought a press from Hearst?

A. I'm not so sure he didn't.

Q. You heard him testify in court?

A. I don't know whether he did or not.

Q. The fact remains, were it not for the fact you brought

this to the attention of Koessler, he would not have
2601 known about it?

A. The press was for sale.

Mr. MOORE: I object to the form of the question and on the grounds it is argumentative. If you want to argue, argue with me. Ask the witness questions. I object to the form of it.

The COURT: Let's have the last question.

(Thereupon reporter read the last question.)

The WITNESS: He certainly would have found out about it.

The COURT: I will sustain the objection. The question is a fact question, pursue it that way, please. Look, again I want to ask you, as far as Mr. Gorman is concerned, now has the hue changed?

Mr. BERNSTEIN: It hasn't changed, and the Government will make the statement that it will not consider——

The COURT: Mr. Gorman is sitting there doing certain things, pursuing certain actions, and writing certain
2602 letters. He is not part of any plot, right?

Mr. BERNSTEIN: Correct.

The COURT: He knows what he did or didn't do.

Mr. BERNSTEIN: Very well.

The COURT: When I say "part of a plot", I don't mean to cast the inference there was one. You think there was. At least this gentleman was no part of it in your concept of things?

Mr. BERNSTEIN: That is correct. If I may make a statement for about thirty seconds, I think it would be helpful to the Court to ascertain the Government's position. The Government has charged (a) that Greater Buffalo's acquisition of the stock of International, that act, in and of itself, is a violation of Section 7 of the Clayton Act. Section 7 prohibits any corporation from acquiring the stock or assets of another corporation engaged in interstate commerce if the effect may be substantially to lessen competition in any line of commerce in
2603 any section of the country. So it is the Government's contention that when Greater Buffalo purchased the stock of International they eliminated competition between Greater Buffalo as a printer and International as a printer. The Government also contends that the relief sought in this case is divestiture not only of what Greater Buffalo acquired illegally, divestiture of everything that it obtained as the fruits of the violation of that law, which includes the Sylacauga plant, because under the Government's contention the Syl-

cauga plant was something that had been developed by Gorman with King initially, and when Greater Buffalo came in they changed certain details and provided certain things, but nonetheless he built on what International—the foundation

International already laid. This is in connection with 2604 the newsprint, in connection with the gift of land, in connection with all of the details, in connection with the press that Mr. Gorman had found in the Hearst organization, International employees set it up. It is for that reason this evidence is relevant. Now, the Government also contends, charges, as a third facet, that Greater Buffalo wouldn't have been in a position to violate Section 7 of the Clayton Act had it not been for the conspiracy in which it was then engaged with its other printing competitor, King Features. King Features, by this deal, whereby Koessler led King to believe that King would be the exclusive selling agent for all printing done by International and done by Greater Buffalo, that King paved the way and assisted in this transaction. The Government also charges that NEA, knowing all of these things, knowing—that is overstating it—NEA knowing——

Mr. STEVENS: Thank you.

2605 Mr. BERNSTEIN: NEA, knowing certain things—I don't want to elaborate at this point—also found itself in the same position——

The COURT: What same position?

Mr. BERNSTEIN: As King. King had to make a decision, it either had to give International more money or finance a southern plant or do something to operate antiquated equipment——

The COURT: Do you mean that your concept is that NEA sold out that old printing thing that Koessler said wasn't worth repairing, that couldn't possibly compete with Koessler, that that was forced upon them?

Mr. BERNSTEIN: No. I say that NEA had to make the decision. It couldn't use that old, crappy plant any more. It either had to find another color printer who would be in competition with Greater Buffalo, or have to build another plant of its own, or would have to do, as it did, it went over to its competi- 2606 or, Greater Buffalo, and said, "Look, I'll turn over to you all the accounts that I have, you print for them, you give me a kickback on them"—we will call it a sales commission and use nice language—"You give me some revenue and we

won't compete for those customers and we won't compete for any new business that are Scripps-Howard accounts, and we'll decide which newspaper business Greater Buffalo gets and which business NEA will get, because I know that you have this kind of an arrangement with King, whereby King is the exclusive sales agent for International, and I want to be in a position to get the same price from you as King, and therefore I want to team up with you." That is the Government's contention, with one more item. Both King and NEA had the power to, and used the power to, tie in the sale of the printing with the sale of the features. That is another aspect that
2607 has to be taken into consideration.

The COURT: Now, wait a minute. That would mean that some newspaperman has to come in here and say, "I was dead unless I agreed to take what they had to sell."

Mr. BERNSTEIN: Some newspaperman could say——

The COURT: That hasn't been done.

Mr. BERNSTEIN: No. We are offering evidence of tie-ins tomorrow or Friday. We will get the evidence in the record. I can't do it all at one time.

The COURT: I thought we were going to close out this case with NEA, finish with Mr. Gorman and I thought you were going to the NEA thing and that was the end?

Mr. BERNSTEIN: That will be the end.

The COURT: What about the newspaperman?

Mr. BERNSTEIN: We will prove through NEA documents and NEA's witnesses the statements I make to the Court.

The COURT: I would like to have some newspaperman come here, if he would, and say, 'I was ground down, period,
2608 flattened out.'

Mr. BERNSTEIN: We wouldn't be able to do that by Friday.

The COURT: You make these assertions, Mr. Bernstein, and I am sure you are genuine. But these are more exciting assertions than trying to give one meaning to old letters, where I have found that, apparently, according to the newspaper people, there is another interpretation. You may say that is wrong, the way they interpret it. There is a lingo in this game that I don't know about.

Mr. BERNSTEIN: The problem is this, your Honor. When we get a factually complicated case—the case isn't complicated, the facts are complicated because it involves those four facets

I explained to you, it involves lots of details, and right at the moment in my examination of this witness I am going into that phase of the case which indicates that Greater Buffalo used the assets of International to open Sylacauga and, therefore, relief should be applied in that direction. Now, if your Honor will bear with me, I appreciate——

The COURT: Let me ask you a practical question. The Sunday paper, the Courier, is now a quarter. Some time ago it was fifteen cents, let's say ten years ago. I suppose when I was a kid it was a nickel. Do you claim this business has caused that paper to be more expensive today?

Mr. BERNSTEIN: Not directly, indirectly. Any time costs are increased, any time an item of cost is increased through the elimination of competition, I do claim that some part of that is reflected in the additional price.

The COURT: They must be going through an awful mess of eliminating competition in this country because prices and costs are going like made, this inflationary thing has spiraled. Do you think that is because competition is being eliminated?

Mr. BERNSTEIN: Your Honor——

The COURT: It is cost of labor, mostly.

Mr. BERNSTEIN: High prices aren't always the result of the elimination of competition.

The COURT: In this instance you are going to definitely show that the public is suffering?

Mr. BERNSTEIN: I represent to the Court that before Friday I will produce documents in this case which will show that International raised its prices to newspapers, raised its prices to King, solely because Greater Buffalo was in the picture and it didn't have that competition from Greater Buffalo. Through documents it will be done by Friday.

The COURT: I think we ought to have a recess and take lunch. Let's convene at two o'clock.

(Thereupon the Court was in recess at 12:30 P.M.)

2611 (Proceedings resumed, pursuant to recess, commencing at 2:00 P.M.)

JOSEPH J. GORMAN, having been previously duly sworn, resumed and testified further as follows:

Mr. MOORE: If your Honor please, I do not conceive that this is the occasion to make the legal argument called for or the denials called for by Mr. Bernstein's exposition to you. We would

state, however, that he speaks outside of the record he has made. He speaks in a framework of supposed facts which haven't been proved, which will not be proved, either in this forum or any other forum, and the confusion that adheres in this case, and this has been true for the past seven years, the day this case started, has been in the entirely inconsistent position that the

Government has taken as to (1) what the content of the 2612 charge they make is—this has changed constantly throughout the case—(2) what the relief they are seeking is.

A very good example is the complaint itself, in its prayer for relief, praying great divestiture of all these properties, says one thing can't be done, they cannot be divested to King, and yet we find counsel now suggesting just such a remedy. I say that is just indicative of a source of this confusion. Let me just direct my attention to replying to his remarks about Sylacauga, because that, I take it, is what the subject matter of the present cross-examination is about. The facts about Sylacauga are simple, they have been developed before this Court before at great length. Unfortunately, Mr. Bernstein wasn't here. I assume that he has had the benefit of reading that record. Your

Honor read it and made findings on it. The fact was that, 2613 as has been developed, and I speak wholly in the record right here, International was planning and would liked

to have built a plant in Sylacauga. They didn't have the means to do it, and without the money, without the resources, without the credit, no plant could be built. That situation prevailed with all of their plans up to the time International was sold to Greater Buffalo, the stock was sold. And it is crystal clear in the record, undisputed by the Government unless they want to dispute their own exhibits, at the time of the sale there was no binding commitment upon the part of International to make the building plans, and there couldn't be, they didn't have the means to do it. Now, they say this is a fruit of what they call a conspiracy, although the nature of this agreement is certainly

confused, to say the least. What they charge is conspir-

2614 acy. The fruit of what? The fact is Sylacauga, the town and the news mill was up for grabs for anybody who

would put a plant down there. They talked to Koessler before they talked to Gorman, years before. International has done some spade work there, but Greater Buffalo got nothing from International out of Sylacauga. It was their own money that built the plant, it was the press they designed and they alone

knew how to design that was set up there. It was their own building plan, everything about it was Greater Buffalo's. If that is a fruit of the conspiracy, I must say this is one of the strangest inferences I ever heard argued in a court of law. Now, that is the story on Sylacauga, and those facts have been developed here fully, yet counsel persists in going through them again and again and again. But that is the state of the record and
 2615 the state the record will remain in. The fact is the Government's theory, current theory, as I understand it, as to Sylacauga is not borne out by this record any more than it was by the record that had been made before your Honor on previous occasions. One other matter and I will subside. Counsel, I think excitedly, said to your Honor he was going to prove things were going on today. I had assumed he closed his case but evidently he is going to reopen it, and he was going to show that these pressures were on, these tie-ins were on, everything was going on today, there were evils going on today, he was going to develop it. We pointed out to him that he was the one who recommended to this Court the entry of a consent decree against Hearst, terminating, as the Government represented, as they would have to represent, what they claim was an evil.

Now, do I understand him to say that his consent
 2616 decree did not, in fact, terminate that evil? I am puzzled, and I will remain puzzled on that score, I fear. But the fact is that this witness has been on the stand under cross-examination approximately six times as long as he was on direct examination. On one occasion Mr. Bernstein said he had fifteen minutes, that was two weeks ago. A couple of hours ago he said he had twenty-five minutes, fifteen more minutes. It seems to me that he should proceed to adduce his proof and not stop for these explanations and statements wholly unsustained by the record, which necessarily call upon us to rebut them.

The COURT: I have more or less invited that, because it was a long, drawnout thing, and I must read the record, and once in a while I have asked the Government and you to put things on focus now. So I can't argue that it is not welcome, I
 2617 frankly asked for it, because, you see, I have a tremendous record here, and I shall hear final arguments, I assume, but basically I will have to think about these things as they progress through the trial.

Mr. STEVENS: If your Honor please, today has been refreshing from NEA's point of view because at least we were men-

tioned, we have found some reason for our being here, having made many trips. As your Honor commented, when I suggested I would have a few questions for Walter Koessler on cross-examination, that you hadn't realized NEA had been mentioned, and today, at least, I have had that refreshing distinction.

The COURT: You are like the man in the back of the court room in a criminal case, the further you keep edging away from the principal defendant—

Mr. STEVENS: Yes, we would like very much to do that, and we feel that not only can we properly get away, by no
 2618 means has the Government drawn us in. I was pleased this morning that Mr. Bernstein thought it proper to correct himself when he said NEA knew this, and he amended, just as he is going to have to continue to amend until the nth day of this litigation his statement, his statement to say certain things occurred from which NEA ought to have known of the existence of the conspiracy. I don't want to go into a lengthy argument upon the sufficiency of the case under Sections 1 and 2 of the Sherman Act, I think there is another time for that. I do want to say that if Mr. Moore, as he properly does, finds the greatest difficulty in supporting any claim of a conspiracy between Greater Buffalo and King Features or Hearst, that is true as far as NEA is concerned, because we say there is neither
 2619 an underlying conspiracy nor anything at all to connect NEA with that conspiracy. I was relieved today to hear Mr. Bernstein say with some fervor or excitement that NEA joined this conspiracy and shook down Greater Buffalo. Now, I anticipated exactly that contention, knowing how fallacious it was, because your Honor will recall that in the few questions that I did direct to Mr. Koessler I concluded with the question on exactly that point, and I don't know how the terminology "shakedown" could even conceivably be applied to NEA in the face of the answer which I received to substantially this question—it was my last inquiry of Mr. Koessler—"No matter how often King Features tried to shake down or shook down Greater Buffalo, as in Waterloo, Iowa, and other places, there is no doubt that NEA never did that, is there?"
 2620 and his answer was no. Now, if that is the basis upon which we are supposed to have entered the conspiracy, certainly there is a direct denial of the hard core of the

Government's charges against NEA. As I say, I don't think this is the appropriate time to argue at length the sufficiency of their case, but I don't want to let it go by without calling to your Honor's attention the fact that the very statement Mr. Bernstein made was anticipated in my inquiry directed to Mr. Koessler, and Mr. Koessler denied the existence of any shakedown.

The COURT: All right. Pursue the witness.

Mr. BERNSTEIN: Yes, your Honor.

CROSS-EXAMINATION

By Mr. BERNSTEIN (Continued):

Q. Mr. Gorman, let's see if we can summarize some of the details of what International Color Printing did with respect to the establishment of the printing plant which later was opened in Sylacauga, Alabama, and which printed under Dixie Color Printing. Is it a fair summary to say—I don't know whether you testified to this or not, it may be repetitious—is it a fair summary to say International sent six employees to Sylacauga to remain for about a year to set up the printing Press 2022 which was used in Sylacauga?

A. Yes.

Q. Is it a fair summary to say that Joe Clinton, who was an International employee was in charge of setting up the plant at Sylacauga under the guidance of Walter Koessler, through you?

A. What period are you talking about?

Q. At some period it was, is that correct?

A. He was working for International Printing Company, knowing eventually he was going down south.

Q. And while he was working for International he was under your direct supervision?

A. Yes, he was doing that on the side as a convenience for our parent company, he continued to do his own work.

Q. And that included visiting Sylacauga, Alabama, for extensive periods of time.

A. Never an extensive period, a day or two at a time.

Q. And that included visits to Buffalo?

The COURT: Has he retired?

The WITNESS: No, no.

The COURT: I thought you said until he—what was the last comment?

2622 (Thereupon the last answer was read by reporter.)

The COURT: I thought you said he retired.

The WITNESS: No, no.

By Mr. BERNSTEIN:

Q. He is in charge of the Sylacauga plant right now, is that correct?

A. I believe so, yes.

Q. And you don't know this?

A. I have no right to speak about who is in charge of the Sylacauga plant, I have nothing to do with it.

Q. Now, during the time that he was an International employee, while he was still at Wilkes-Barre, he did spend some time in going over to Greater Buffalo's plant in Buffalo and—

A. I doubt if he was there more than once.

Q. Is it fair to say that International purchased a great deal of equipment for the Sylacauga plant and was later reimbursed by Greater Buffalo for that?

A. Around 1960, yes. 1959-1960, yes.

Q. As far as the outsiders that International was dealing with, they didn't know that the plant was for Greater
2623 Buffalo, they thought it was for International?

A. They didn't know. As Joe Clinton himself testified, the people in Sylacauga thought he owned it.

Q. And International paid approximately \$32,500 for the 2022 press that was later installed in Sylacauga, is that correct?

A. That is right.

Q. And then spent about \$100,000 to repair that and was later reimbursed by Greater Buffalo?

A. We were reimbursed immediately, and we were repaid immediately, as we made the payments. It was a matter of convenience for our parent company. It was not anything that was ever intended for—never any thought that International Color Printing would run that plant and build it after Greater Buffalo bought International.

Q. Well, earlier we read—the record will show that earlier we read documents where you wrote to the Chamber of Commerce and the Development Commission, saying International was going to run it?

A. Sure, I was working for Greater Buffalo Press.

Q. You wanted the people in Sylacauga to believe——

A. They didn't, they knew all about it.

Q. They knew?

A. After 1955, yes, they knew.

2624 Q. They knew title was taken in Greater Buffalo?

A. They knew it, they knew it.

Q. But Greater Buffalo was to lease the plant to International and International was to operate the color printing plant?

A. No.

Q. That's what the memorandum—that is what your letter says.

A. All right, I didn't know what I was talking about.

Q. You didn't know what you were talking about?

A. No.

Q. You say now, under oath——

A. If I said that I didn't know what I was talking about.

Q. Now you say under oath that the fact was otherwise?

A. The fact was always that Greater Buffalo would run the plant.

Q. When Sylacauga opened King transferred about six million runs, six million 4's from Wilkes-Barre to the Sylacauga plant, is that correct?

A. Six, seven, I don't know.

Q. What is your best recollection?

A. I don't know.

Q. Well, there has been testimony—the answers to the interrogatories will show the exact amount that was transferred there, and I represent it shows about six million 4's.

A. Well, whatever it was, there was a tremendous saving to the newspapers in the south.

Q. Was this transfer upon Greater Buffalo's instructions?

The COURT: Let me hear that again?

The WITNESS: It was a tremendous saving to the newspapers in the south.

The COURT: You mean cost?

The WITNESS: In cost, in transportation.

By Mr. BERNSTEIN:

Q. Saving in this extent——

A. In other words, the ultimate consumer reaped great benefit, and for a time we ran slack because we transferred six mil-

lion to the south—King Features did—then Greater Buffalo filled us up again.

Q. What I am trying to understand——

A. At the same time Southern Color was growing to capacity.

Q. You don't know that of your own knowledge?

A. I do.

Q. How do you know?

A. Because whenever we lost a run, King lost a run, I checked with the newspapers, I found out and I went to Southern Color and I asked them myself.

2626 Q. Did Southern Color—did International lose that run to Southern Color because Southern Color quoted a lower price?

A. It lost it for two reasons. There was a reason for each loss. There was our transportation; as for price, I know nothing, I'm not familiar with price. And this may not appear important to you, but it is a tangible, Jack Hornady's southern charm. He was born in the south, he has lived in the north forty years, he contends to be a southerner. He has friends on the newspapers who for personal friendship give him the business.

Q. As far as the runs that were transferred from Wilkes-Barre to Sylacauga, that was done on Greater Buffalo's instructions, is that correct?

A. What is that?

Q. The runs that were transferred from Wilkes-Barre to Sylacauga, you did that——

A. Yes, of course, I didn't have authority.

Q. On Greater Buffalo's instructions?

A. Yes.

The COURT: Excuse me. You are a technician and a printer, basically. Do you know the Southern Color Print facilities?

The WITNESS: Yes, sir.

2627 The COURT: Could they compete in any sense, turn out a product comparable to what you——

The WITNESS: They are not equipped to do quite a number of jobs which we are. Take 10-page sections, for instance. Hornady represents Southern Color, and he took the Raleigh News and Observer from King, a 10-page section. Southern Color wasn't able to do it. Hornady pulled it up in Wilmington, Delaware, at another plant. He really represents two plants. Now, they don't have preregistry, they can't register third

pages, they can't register half pages, they can't register quarter pages, and that is not because we have a monopoly, it is because Walter Koessler had the know-how. I had more than they did. Back in 1946 I went into Newport News myself and advised them how to get started. We were not trying to keep them out of business. I have a flock of mail between me and
 2628 Commander Bottom, an interchange of correspondence, where I was helping them get started. As late as—after Commander Bottom died, I did the same with Bob Smith who was on the stand here.

By Mr. BERNSTEIN:

Q. Do you have any idea about how many runs, how many fours International lost to Southern Color?

A. I would say since 1950 we lost approximately three million 4's, and since 1956 we lost the difference between approximately six hundred—or about two million——

The COURT: Why?

The WITNESS: Jack Hornady sold these newspapers on the idea of having their work done down there, they saved on transportation. Norfolk, Richmond, Raleigh, Ashville, Winston-Salem, in that area. Hornady is a professional southerner.

By Mr. BERNSTEIN:

Q. Those runs he lost were near——

2629 A. In that area.

Q. Right in that vicinity?

A. Yes.

Q. Do you have an estimate about how much is the maximum that Southern Color prints, how many fours?

A. I think they are printing about 3,400,000 fours.

Q. That is about the most?

A. That is what they are doing.

Q. Now?

A. Yes.

Q. Six million is what was transferred from Wilkes-Barre to Sylacauga?

A. What has that got to do with it?

Q. We are showing the comparison between the volume of Southern Color, that you indicate as making such a tremendous——

A. I can't help if they built only two presses, that is their capacity, that is up to them.

Q. And they don't have the same flexibility that Wilkes-Barre has?

A. No.

Q. Nowhere near it?

A. They have maybe close to what we have; not nearly as much as Buffalo has.

Q. Do you believe——

2630 A. Mr. Smith told me they are doing all right.

Mr. RAICHLE: Who is Mr. Smith?

The WITNESS: The manager.

Mr. BERNSTEIN: Do you have any other questions, Mr. Raichle?

The COURT: Look, let's move along.

By Mr. BERNSTEIN:

Q. Do you recall representations made to this Court during the motion to modify the injunction to open up the Sylacauga plant, as to how many fours was necessary before you could open Sylacauga properly?

A. No, I don't.

Q. Do you recall whether it was six million?

A. No.

Q. You don't recall?

A. No. I'm sorry, no.

Mr. BERNSTEIN: Will defense counsel stipulate as to the representations made to the Court?

Mr. MOORE: We will stipulate, if you will put in the proceedings. Whatever we did, we did. You don't seem to want to put in the proceedings, you don't want part of them, 2631 you say.

Mr. BERNSTEIN: I have no objection, if it will simplify things, to move along. I have no objection to permit either side to draw on those portions of the proceedings that have been in evidence, that it wishes to draw on. I think that is the fairest way, so that the Government does not adopt anything that the defendants offer in evidence, the defendants do not adopt anything the Government offers. That will simplify a lot of things.

The COURT: That was on the special proceedings, it was all pointed to the special proceedings, the application for the injunction?

Mr. BERNSTEIN: That is correct.

The COURT: Do you want to put it in here now for the Court's consideration, all the way, as proof in this case, which is squarely in issue?

Mr. BERNSTEIN: The Government—the answer is no.

The COURT: Then nobody gives anything.

2632 By Mr. BERNSTEIN:

Q. Are you still an officer of Dixie Color?

A. I don't think I was ever an officer of Dixie Color. I don't think I was.

Q. Well—

A. I may have been. If I was, it was very briefly.

Q. I will show you some documents, we will get into that. I am trying to get your own recollection now. What do you recall were the events that led up to the termination of International's participation in preparing the plant at Sylacauga, and so forth, and the operation of the plant by some other corporation? Did you have any discussion about it?

Mr. MOORE: I object to the form of the question in that it calls for a conclusion.

Mr. BERNSTEIN: I will withdraw the question. I offer in evidence line 23 from page 121 of the hearing on October 25, 1961, which was the proceedings to modify the preliminary injunction, in which Mr. Joe Clinton testified under oath that it would require a minimum production of seven and one-half million

fours to operate the Sylacauga plant at a profit.

2633 Mr. MOORE: Are you offering that in connection with this? Can you finish this witness and then put your proof in?

Mr. BERNSTEIN: Yes, I offer that statement. May that be received in evidence?

The COURT: All right.

By Mr. BERNSTEIN:

Q. I ask you, Mr. Gorman, do you agree with that statement?

A. I don't know what Joe Clinton's thoughts were on the subject at all. I wouldn't attempt to answer that.

Q. Now, P-126 for identification is a certificate of incorporation of Dixie Color Printing Company, and I invite your attention, Mr. Gorman, to the fact that the incorporators were yourself, Mr. John Walter Koessler, Mr. Kenneth L. Koessler, Mr. William J. Hammond and Mr. Joseph T. Clinton, and I

invite your attention to the last page which shows the date of April 18, 1957. I offer P-126 in evidence.

Mr. STEVENS: Objection on behalf of NEA.

Mr. RAICHLE: No objection.

The COURT: Received.

(Thereupon Plaintiff's Exhibit P-126, previously marked for identification was received and marked in evidence.)

By Mr. BERNSTEIN:

Q. P-127 for identification, Mr. Gorman, is a document that was submitted by Greater Buffalo. Do you recognize the handwriting on that document?

A. I think it is Bill Hammond's.

Q. It shows the officers and directors—it was prepared August 3, 1960, and it shows that the officers and directors of Dixie Color Printing Corporation—

A. Wait a minute, you say it was prepared August 3, 1960?

Q. Isn't there a date on the upper right hand corner, 8-3-60?

A. You mean this paper was prepared?

Q. Yes.

A. That date is on there, yes.

Q. It shows that the officers and directors of Dixie Color Printing, from April 18, 1957 to—what is that date in 1960—August 3, 1960, were Joseph Gorman, President and Director; John W. Koessler, Vice-President and Director; Kenneth L. Koessler, Secretary and Director, Joseph T. Clinton, Assistant Secretary and Director; William J. Hammond, Treasurer and Director. Does that refresh your recollection?

A. No, if I was a director or president, I have no recollection of it at all, whatsoever.

Q. You have no recollection of doing anything?

A. No.

Mr. BERNSTEIN: I offer P-127 in evidence.

Mr. STEVENS: Objection on behalf of NEA.

Mr. MOORE: We have no objection.

The COURT: Received.

(Thereupon Plaintiff's Exhibit P-127, previously marked for identification, was received and marked in evidence.)

By Mr. BERNSTEIN:

Q. P-119 in evidence is a letter dated July 2, 1957, from Mr. Gorman to Mr. Koessler, in which you, Mr. Gorman, report—is this a fair summary of the letter, without reading all of it,

that you bring Mr. Koessler up to date on what you have been doing on Press 2022 for the Sylacauga plant? Is that what the purpose of the letter is?

A. We were advising them we were carrying out his instructions as to rebuilding Press 2022 according to his plans and specifications.

Q. P-128 for identification, Mr. Gorman, is another letter that you wrote to Mr. Koessler on behalf of International Color Printing Company, dated February 5, 1960?

A. Yes.

Q. And in the second paragraph you say: "We expect to complete our Press 2392 between February 15th and March 1st. We would then be able to go ahead with 2022." Is 2392 a press you were completing at Wilkes-Barre?

A. Yes.

Q. And 2022 was to be worked on for Sylacauga?

A. In truth we did nothing on 2022 for about three years.

Q. Does P-128 relate in some detail the things that International was doing with respect to that press, to prepare it for installation at the Sylacauga plant?

A. Yes, entirely under the instructions of Walter Koessler.

Q. The last paragraph—next to last paragraph you say: "As things stand now we think that Joe Clinton should go to Sylacauga about the second week in March. He would be able to line up a lot of material which needs to be purchased locally and arrange for some of the work which must be done such as motor pit, ink tanks, racks, etcetera. As things stand now, we figure that Joe would leave about March 15th, and stay in Sylacauga three or four weeks and return to Wilkes-Barre about April 1st, and stay maybe for the month of April."

Does that refresh your recollection that Clinton did—

2637 A. As to what?

Q. Does that refresh your recollection that Clinton, while he was an employee of International, did go down to Sylacauga to install the plant, and it wasn't exactly as you said before, that the only time he went there was about a week before it opened?

A. I didn't say that. I said he went there at various times for a small period of time, and I consider a month a small period of time.

Q. "In the meantime he will get in touch with Buffalo to coordinate the material in the works, shipment of first items, et cetera, and then he would count on returning to Sylacauga again early in May for a few weeks. He wanted to have my approval of his thinking and I have given it, and I think he will go down and we will pursue along the lines laid out above unless we hear further from you." I offer P-128 in evidence.

Mr. STEVENS: Objection on behalf of NEA.

Mr. MOORE: We have no objection. I would point out that the relevancy of it seems far-fetched to me. This is a subsidiary corporation. I suppose Greater Buffalo could direct its subsidiary to do a lot of things.

The COURT: What about that?

2638 Mr. BERNSTEIN: The point is that this is a continuation of what had started—

The COURT: Of your claim, I'll receive it, overruled.

(Thereupon Plaintiff's Exhibit P-128, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: P-129 for identification is a letter from Eugene Muller to J. J. Gorman, International Color Printing Company, concerning the understanding for the purchase by International of the Press 2022 and the price, \$32,500. It is offered in evidence.

Mr. MOORE: No objection.

Mr. STEVENS: Objection for NEA.

(Thereupon Plaintiff's Exhibit P-129, previously marked for identification, was received and marked in evidence.)

The COURT: That is the old press which was at—

The WITNESS: Rebuilt.

2699 The COURT: At Wilkes-Barre?

The WITNESS: We bought it in Baltimore. It was sent to—

The COURT: That is right.

By Mr. BERNSTEIN:

Q. P-130 for identification, Mr. Gorman, is that a memo to you dated September 10, 1958, from Mr. Tom Brennan on the subject of stereotype equipment for Sylacauga, Alabama?

A. I don't think it has anything to do with Sylacauga.

Q. What is the subject in that letter?

A. It's about—oh—three pages about a lot of detail about machinery. Do you want me to read all that?

Q. Either you are going to take the time or I am.

A. All right. Take paragraph by paragraph.

Q. Is the subject matter of that document stereotype equipment for Sylacauga?

A. That is right.

Q. And who is Tom Brennan?

A. He is a purchasing agent for us.

Q. For International?

A. Yes.

Q. And is Mr. Brennan reporting to you about a meeting that he had in Buffalo concerning equipment that could
2640 be sent from Buffalo—equipment that could be sent from Wilkes-Barre to the Sylacauga plant and equipment that could be purchased in Sylacauga for the plant?

A. The first paragraph is about web detectors. I don't know whether he was talking about sending them to Wilkes-Barre or Sylacauga.

Q. Stereotype equipment for Sylacauga?

A. I am talking about the first paragraph.

Q. The subject of the memorandum is—

Mr. RAICHLE: The letter speaks for itself.

Mr. BERNSTEIN: I offer the letter in evidence, your Honor.

Mr. STEVENS: Objection for NEA.

(Thereupon Plaintiff's Exhibit P-130, previously marked for identification, was received and marked in evidence.)

The COURT: There is one thing I have in mind, Mr. Gorman, there is some jargon in the printing game—

The WITNESS: Just as there is in gardening and law.

The COURT: Right. If you think there is a purpose in enlarging on the jargon, I would like to hear it.

2641 Mr. BERNSTEIN: P-131 for identification is a memorandum to Mr. Gorman. I offer it in evidence.

Mr. RAICHLE: By whom?

Mr. STEVENS: Objection for NEA.

The WITNESS: Speaking of jargon, your Honor, when you speak of a tired family in Wilkes-Barre, and a limping old press, don't ever refer to me as a limping old president.

Mr. BERNSTEIN: I offer P-131 in evidence.

Mr. MOORE: No objection.

Mr. STEVENS: Objection for NEA.

(Thereupon Plaintiff's Exhibit P-131, previously marked for identification, was received and marked in evidence.)

Mr. RAICHLE: This is stuff we have gone all over in the other hearing. It is all stuff that was gone over before in the other hearing, about the press and the——

Mr. BERNSTEIN: That is the end of the Government's record with respect to this matter.

2642 Mr. RAICHLE: You are through?

Mr. BERNSTEIN: On this subject, yes. I offer P-132 in evidence.

Mr. STEVENS: Objection for NEA.

(Thereupon Plaintiff's Exhibit P-132, previously marked for identification, was received and marked in evidence.)

Mr. RAICHLE: I have only one or two questions.

Mr. BERNSTEIN: I am not through with this witness. I am through—this takes the place of those two volumes on the hearings for the modification of the injunction.

The COURT: The thing I am concerned about—do you remember the last time, you talked about fifteen minutes, a half hour, an hour, and then I said finally, "Can we get finished?" and you said no? Now, we started at ten, we didn't work too long, true, but I am pretty well beat from my morning efforts.

We are going now since two o'clock and it is quarter
2643 to three. I don't understand it, what is new, what is surprising to you?

Mr. BERNSTEIN: Surprising to me is the denials of the witness and the long details I thought I could summarize without reading the memorandums, that I would get forthright, cooperative and frank answers.

The COURT: I thought you did. I don't think he has been evasive. He said no or yes. Once in a while he wants to talk a bit. I don't think there is any estimate of time.

Mr. BERNSTEIN: My estimate was based on the fact it could go—apparently I'm a poor estimator.

The COURT: Look, you have got three days. I don't understand it. Do you remember the last time before we adjourned, finally in desperation we started to talk about fifteen minutes, a half hour, and finally it was obvious we could not finish the testimony of this gentleman. Now we are here again, at
2644 it all day.

Mr. BERNSTEIN: Your Honor, please—

The COURT: This man, you claim, is a cog in the wheel, innocent all the way?

Mr. BERNSTEIN: A very important cog, your Honor.

The COURT: All right.

Mr. RAICHLE: What are you going to talk about?

Mr. BERNSTEIN: I am going to talk about the fact that the sale to Greater Buffalo of International was all one package deal and——

The COURT: You said this man was no party to it?

Mr. BERNSTEIN: He is a witness to certain events.

The COURT: He signed certain letters and he made certain transactions. I still feel that you are zealous about him. You think he is something in the thing.

Mr. BERNSTEIN: I think he has information that is relevant to an understanding of what Mr. Koessler has said wasn't so.

The COURT: Am I right? The last time we were around you thought you could finish this man in fifteen minutes?

Mr. BERNSTEIN: That is correct.

The COURT: Now, what has changed since then?

2645 Mr. BERNSTEIN: At that time I intended to just offer the documents in evidence and argue it at a later date. Now it appears, in order for the Court to comprehend this matter as it goes along, I have changed the method of presenting the case.

The COURT: I asked you once in a while to summarize the letters, the comments, so I can look at those among the many other things I have concerning me. I don't want you to spell it out in big letters like a primer in first grade, after all I wasn't born yesterday.

Mr. BERNSTEIN: I will try my best to move along rapidly, your Honor. I hesitate to make any——

The COURT: Go ahead.

By Mr. BERNSTEIN:

Q. Mr. Gorman, isn't it a fact that during the course of your negotiations with King, prior to Greater Buffalo's purchase of International, while you were negotiating with Walter Koessler, Walter Koessler told you that the general arrangement
2646 ments that International had with King would be continued if he acquired the stock of International?

A. Yes.

Q. Isn't it true that you told King you were negotiating with Greater Buffalo?

A. I told Frank Nicht, yes.

Q. And isn't it true——

The COURT: Aren't you going to read a letter and offer it?

Mr. BERNSTEIN: No, I have saved twenty-five minutes reading from his testimony in the Grand Jury because he has stated what he told in the Grand Jury under oath.

By Mr. BERNSTEIN:

Q. Isn't it the truth that you knew that Nicht and Koessler were having discussions for an arrangement with Greater Buffalo similar to the arrangement that King had with International, that is, Greater Buffalo was to be the exclusive printer for King?

A. Nicht told me that he wanted to be an exclusive sales agent for Greater Buffalo.

Q. Did Koessler tell you the same thing?

2647 A. Koessler—

Mr. RAICHLE: Mr. Koessler testified to the same thing here.

Mr. BERNSTEIN: Excuse me, this is a pretty sensitive area, I think—

The COURT: I didn't hear your objection.

Mr. RAICHLE: I said that Mr. Koessler testified to the same thing here.

The COURT: I will let him pursue that.

By Mr. BERNSTEIN:

Q. Then Mr. Koessler did—

A. If I remember, Koessler objected to any such arrangement.

Mr. RAICHLE: Sorry.

The COURT: He objected to any such arrangement. Koessler told him he objected to any such arrangement.

The WITNESS: He didn't like it.

By Mr. BERNSTEIN:

Q. That is your present recollection?

A. Yes.

Q. Your present recollection is that you believe that King controlled International lock, stock and barrel, is that
2648 correct?

A. I think that is absolutely true, yes.

Q. Isn't it true you found Nicht meticulous in remembering details and recording details?

Mr. RAICHLE: Objection. One witness cannot characterize another's trustworthiness. This is a back door attempt to get in some memorandum.

The COURT: I am sorry, I didn't hear your question.

Mr. BERNSTEIN: Isn't it true that you found Nicht, over your long dealings with him, to be a person who was meticulous in remembering details and recording details?

The COURT: That is a characterization, sustained. Look, I know he is meticulous. I will accept that he is a meticulous fellow. I can't get over the image, as I sit here, of the great Hearst dynasty and Nicht, and what an uncomfortable life that must have been to have to shape up every day. All right.

2649 By Mr. BERNSTEIN:

Q. At the time of this transaction when Greater Buffalo purchased International's stock, and during your negotiations with King Features, the fact was King Features had never sent you a cancellation notice canceling its existing contract, had it?

A. No, sir.

Q. And that contract was to run until International received six months' notice of cancellation or vice versa?

A. That is right.

Q. And at that time, as you testified this morning, you were negotiating—at that time, I mean up to June of 1955, you were negotiating with Nicht to get the kind of contract that would give International a better price than it had been receiving before, a price that would give dividends to International stockholders and provide enough money to build a plant in Sylacauga and amortize it?

A. That is correct.

Q. And after Greater Buffalo acquired International then you changed the nature of the negotiations, and you were to get, under Mr. Koessler's instructions, you were to get as much as you could, and you wound up with a contract that gave you the same price as you had before?

2650 A. I didn't change the nature of the negotiations. I tried up to the last to get the best I could and it was you who said that I got more when I actually didn't.

Q. What did you get?

A. I got exactly what I had before I started.

Q. It is exactly the same with one difference; you now had a ten-year contract with King rather than a—

A. Which I didn't have—

Q. Which you didn't have before?

A. Before the company was sold.

Q. Before the company was sold——

A. I had six months.

Q. You had six months; you were at King's mercy, and after the company was sold you had the assurance that for ten years King could not do printing anywhere else except over and above 75% of its requirements?

A. That's what the contract said, 75% of its requirements.

Q. Did anything occur——

The COURT: Look, is there anything that is so odious about that?

Mr. BERNSTEIN: This is diametrically opposed to the representations of counsel and the statements made by Mr. 2651 Koessler, that the contract only had four months to go, that International was dying, it had nothing, King's contract was canceled. This testimony shows that International was, whatever its financial condition was——

The COURT: It got new blood, it got a shot, new blood. This man who struggled, instead of being out of a job with his people in the union, now feels he's got a future.

Mr. BERNSTEIN: The Government submits——

The COURT: That is one side of the coin, tell me about the other.

Mr. BERNSTEIN: The other side of the coin is that had Koessler not made this deal with Nicht, King Features, Nicht would have had to do something, put some money in the International plant.

The COURT: They didn't have money.

Mr. BERNSTEIN: Hearst don't have money?

The COURT: The testimony was that he could not get to first base with the money in his own outfit.

Mr. BERNSTEIN: That is correct. If he reached a 2652 point where he was not going to have a printer, he would get the money, he would have to do something or he would have to get out of the printing business.

The COURT: You see, isn't it true, Mr. Bernstein, that throughout this case there are two interpretations? You bear the burden of proving by a fair preponderance your assertions. I want you to tell me when you think you have borne that burden on any one point and we will talk about it later.

Mr. BERNSTEIN: All right, your Honor.

By Mr. BERNSTEIN:

Q. Now, I show you P-133 for identification, Mr. Gorman. That is a letter that you wrote to Mr. Koessler in October of 1959, five years after Greater Buffalo owned it. Isn't it a fact that with the same contract that you had with King as to price, you doubled International's profit by charging King more under this same contract?

A. No, that is not correct.

2653 Q. Well, I will read the letter: "Dear Walter: Prior to four years ago, when King Features asked for a price on a new supplement, we figured the exact number of hours which would be required and the new plates which would be required, et cetera, and then estimated the labor cost. We then figured overhead per thousand including newsprint, ink, twine, wrapping, power, light, oil, grease packing, payroll taxes, vacations, et cetera. We figured on arriving at an operating profit of \$7.00 per hour per single width press on all new business. Since four years ago we have gradually been increasing the desired profit per press hour until we are now at a point where we used \$15.00 instead of \$7.00. In other words we have more than doubled our operating profit on all new business. This plan had to be worked out gradually so as not to run into too much opposition from King. We figured pretty high on our overhead and we also figured pretty high on stereotyping so that right now on all new prices we are asking for considerably more than four years ago." Would you please explain that?

A. You said——

Q. Pardon me, would you please explain——

A. You said this indicated we doubled our profit, which would indicate that we doubled our profit on everything
2654 we did for King, which was not true.

Q. On what did you double the profit?

A. Only on new business. We decided that because of higher overhead, higher costs, and so forth, we would charge \$15.00 a press hour instead of \$7.00 on new runs.

Q. Did King know this?

A. I didn't have to tell them that.

Q. Weren't you concealing this from them?

A. I didn't have to conceal it. King didn't have to know. The contract, if you read it, provided that we would figure the cost on new runs. We figured our costs, that is it. We didn't have to tell King how we figured.

Q. That same provision was in the contract prior to 1955, wasn't it?

A. And we did the same thing except we didn't raise it to \$15.00.

Q. You didn't raise it as much prior to 1955 as you did after 1955?

A. No. Walter Koessler had nothing to do with it, that is because I got sick of bowing down and catering to Nicht, I didn't have to do it any more, I raised it to \$15.00.

Q. Is it a fact that had you had the same attitude before 1955 you could have done the same thing?

A. I couldn't.

2655 Q. Why not?

A. Because I am in a strong position, I have new blood.

Q. And King has nowhere else to go?

A. I don't care what King does, that is up to them. I told King they could do one of three things; he could either build his own plant, he could establish a new plant, or he could go somewhere else and get it done, he couldn't have his cake and eat it.

Q. When was this?

A. Prior to 1955.

The COURT: Let me ask you this—

The WITNESS: Even with this I didn't make 1%.

The COURT: Previously you did not figure a fair return for your efforts, and now you got—

The WITNESS: A little help, a new business.

The COURT: Did anybody dictate that rate to you?

The WITNESS: No.

The COURT: I want to be sure—

The WITNESS: No, your Honor. Pardon me. Koessler had no idea how I figured.

Mr. BERNSTEIN: I offer P-133 in evidence.

The COURT: What do you think about this phase, Mr. Bernstein?

2656 Mr. BERNSTEIN: I think it demonstrates the tremendous power that King Features had over International before, that it controlled its operations—

The COURT: All right, he didn't like it. Here, he makes a change and he complains before that he was driven into the ground by King, now he says he is getting a fair return, and he

is the manager, and he says flatly that Koessler had nothing to do with it. Do you dispute that?

Mr. BERNSTEIN: No.

The COURT: Wait a minute. You don't dispute it? Do you think something was going on here then or was this man finally coming up for a breath of air and making a fair return on his efforts?

Mr. BERNSTEIN: That is correct, the man was making a fair return, and he had been unable to make a fair return before because King Features controlled him the way it did, but the legal solution was not the purchase of International by the competitor, Greater Buffalo. That was an illegal solution, much the same as—

The COURT: What would have been the solution, you say a legal solution, what could have been done?

Mr. BERNSTEIN: He could have done just what Mr. Gorman said on the stand. He told Nicht, 'Look, I'm not getting enough, you've got to do one of three things—'

The COURT: Nicht would tell him to go to hell.

Mr. BERNSTEIN: Nicht will tell him to go to hell if he was in an insolvent condition.

The COURT: I don't want to hear any more. I have the impression Nicht had Gorman over the barrel. All right, go ahead.

Mr. BERNSTEIN: The Government concedes that, your Honor, that Nicht had Gorman over the barrel but it was Nicht who would have to go out of the printing business. If he wanted to remain in the printing business he had to provide International with sufficient money to remain solvent. If Nicht drove International into insolvency, Nicht wouldn't have a printer.

2658 The COURT: I will hear you at length, Mr. Bernstein, on the whole argument.

Mr. STEVENS: Objection on behalf of NEA.

Mr. MOORE: No objection.

(Thereupon Plaintiff's Exhibit P-133, previously marked for identification, was received and marked in evidence.)

By Mr. BERNSTEIN:

-Q. I offer in evidence P-134 for identification, another report from Mr. Gorman to Mr. Koessler, dated August 23, 1955.

Mr. STEVENS: Objection on behalf of NEA.

Mr. MOORE: What is the date of that?

Mr. BERNSTEIN: August 23, 1955.

(Thereupon Plaintiff's Exhibit P-134, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: As to the financial condition of International, your Honor, I believe we can stipulate with counsel—

The COURT: All I know about that is that they were 2659 in the hole for about \$100,000, that this man testified that between the three heirs—I don't remember if the widow was in it or not—there was a constant—

The WITNESS: She was dead.

The COURT: —there was a constant effort to get a dividend. He said that he fought against it, he knew their cash was perilous, and despite that he did his best to meet that. I think that corporation, when there was a changeover, was in desperate condition.

Mr. BERNSTEIN: I will offer in evidence the income from International Color Printing for the—

The COURT: What is that, a profit and loss sheet?

Mr. BERNSTEIN: Income tax return, I will put the figure in evidence and—

The COURT: For income tax purposes, having been around the course a few times, that is one thing. How about a profit and loss sheet, how about the sheet that Koessler got 2660 to buy the place?

Mr. BERNSTEIN: I don't have that.

The COURT: You know what I am talking about, I repeat that I wasn't born yesterday.

Mr. BERNSTEIN: Can we have the record show that the income reported for income tax purposes in the year 1950, there was a net income reported—this is after depreciation but before Federal income tax—of \$199,569.18.

The COURT: What is that?

Mr. BERNSTEIN: The net income, net operating income after payment of officers' salaries and after the deduction of depreciation but before—

The COURT: What year?

Mr. BERNSTEIN: 1950. \$199,569.18.

Mr. MOORE: Give the tax.

Mr. BERNSTEIN: The amount of the tax was \$78,951.97.

Mr. MOORE: Federal tax?

Mr. BERNSTEIN: That is right.

The COURT: I am not playing policeman, I am not concerned about how much tax they paid.

Mr. BERNSTEIN: The net income reported for income
2661 tax purposes in 1951 was \$222,726.19 and the net
income—

Mr. MOORE: Give the tax.

Mr. BERNSTEIN: Does your Honor want—

The COURT: I am talking about Mamie, what did she get
out of it. How much was the tax?

Mr. BERNSTEIN: \$120,859.28. That tax represents an in-
come tax of \$107,533.00, an excess profit tax of \$13,825.94, and
the salary shown there for compensation for Joseph J. Gorman
as president was—

Mr. MOORE: What difference does the salary make—

Mr. BERNSTEIN: \$39,193.71.

The COURT: This is net, you are talking about net earnings.
Net means after Gorman was paid.

Mr. BERNSTEIN: That is right.

The COURT: You have given me the net. Are you going to
offer the returns?

Mr. BERNSTEIN: No. I can offer them.

Mr. MOORE: I object to all the returns going in. We haven't
seen them.

2662 The COURT: Have a look at them, see if you object.

Mr. BERNSTEIN: We put the figures in, we don't
have to put the tax in unless the Court wishes. The Govern-
ment has no objection.

The COURT: What has Gorman's salary to do with the net
earnings of the corporation?

Mr. BERNSTEIN: It shows that King Features was paying
enough money from its printing revenue to pay significant
officers' salaries, dividends to people who were in another
country, yet after depreciation, and so forth, there was still
a net income upon which a tax was paid, so therefore it was not
insolvent.

The COURT: That is a new area. I am interested in that,
because I have the very definite image that either Joe Gorman
is telling me the fact, that this thing was really dead, that he
was being put upon constantly, he was being driven under-
ground by the demand to declare dividends on or about
2663 the time when somebody came along with a message
that he knew about and said, "We will put you on your
feet." Either Joe Gorman is wrong or he was in distress. I will

listen to all the proof in the case. That is the image I have. We will take a recess and then go back at it again.

(Thereupon the Court was in recess at 3:25 P.M.)

(Proceedings resumed, pursuant to recess, commencing at 3:40 P.M.)

(Thereupon document was marked Plaintiff's Exhibit P-141 for identification.)

By Mr. BERNSTEIN:

Q. Mr. Gorman, can you identify P-141 for identification, please? Just tell us what the piece of paper is.

A. It is a statement showing the operating profit and working capital, et cetera, from 1950 up to 1959.

2664 Q. For what company?

A. International Color Printing Company.

Mr. BERNSTEIN: I offer P-141 in evidence.

Mr. MOORE: No objection.

Mr. STEVENS: Objection on behalf of NEA.

(Thereupon Plaintiff's Exhibit P-141, previously marked for identification, was received and marked in evidence.)

By Mr. BERNSTEIN:

Q. I show you P-61 marked for identification, and ask you if that is not a readyprint survey that you prepared during the normal course of your business prior to 1955?

A. For the year 1955.

Q. Yes. I show you P-63 for identification, and ask you if that is not a letter you prepared, which explains in detail how you prepared that readyprint survey, what your practice was?

A. Yes.

Mr. BERNSTEIN: I offer P-61 and P-63 in evidence.

Mr. MOORE: No objection.

Mr. STEVENS: No objection.

2665 (Thereupon Plaintiff's Exhibits P-61 and P-63, previously marked for identification, were received and marked in evidence.)

Mr. BERNSTEIN: I offer in evidence, your Honor, P-62 for identification, and represent P-62 is an exhibit prepared by—offered by defendant Greater Buffalo Press at a prior proceeding in this case, and the Government offers it for the items contained in columns 1, 2, 3, and 4, and does not offer the items contained under column 5, or the comments on the sheet, and does not offer the figures with respect to the defendant Hearst.

The COURT: You offer part of it, why?

Mr. BERNSTEIN: I offer that part——

The COURT: What do you mean you offer——

Mr. RAICHLE: We will offer the rest of it.

Mr. BERNSTEIN: No objection to the rest, as long as it is clear——

The COURT: All right, received.

2666 (Thereupon Plaintiff's Exhibit P-62, previously marked for identification was received and marked in evidence.)

The COURT: Now, Mr. Bernstein, when you get through with that, I want to know from the man in charge, who accounted to the heirs what the real picture is about the financial situation in this corporation. It seems to me that you are offering some promising statements. This is the man that ran the place, as far as I know. Hit him in the head with those statements, "How do you explain that?", rather than go around the course again and again. Do you follow me?

Mr. BERNSTEIN: Not clearly, your Honor.

The COURT: You are putting in a picture of largesse and the wonderful operation of that corporation. Why don't you ask him what about that?

Mr. BERNSTEIN: I was putting in a picture of non-insolvency.

2667 The COURT: The same thing.

Mr. BERNSTEIN: There is a big difference.

The COURT: All right, you do it your way. I am trying to cut through this thing. There must be some reason; either Gorman isn't giving exactly the truth about the distressed nature of this corporation or according to your figures it's going like a house on fire.

Mr. BERNSTEIN: Those figures don't show they are going like a house on fire, those figures show they are holding their head above water, they should do better, the Government concedes that, the Government concedes that King should have put more money in there, should have done all the things Mr. Gorman wanted them to do to permit International to compete with Greater Buffalo.

The COURT: What do you mean, more money?

Mr. BERNSTEIN: New presses, put up the money for the Sylacauga plant.

The COURT: How much more money?

2668 Mr. BERNSTEIN: It didn't take much money. Nicht could have done the same thing Mr. Gorman did with the Sylacauga Chamber of Commerce, getting them to deed the land, using the bank's money down there to put the building up. Nicht could have done that.

Mr. RAICHLE: That is conceded that Nicht had the chance to do it?

Mr. BERNSTEIN: That is correct, Nicht had the chance to do it, had Section 7 of the Clayton Act not been violated.

The COURT: I remember some testimony that Hearst's policy was "We don't want to get in the printing business".

Mr. BERNSTEIN: That is right. We have some memoranda—

The COURT: I remember that out in San Francisco there were excellent presses to turn out this stuff.

Mr. BERNSTEIN: Mr. Gorman's memorandum shows those presses were not so hot, it couldn't be done.

The COURT: Go ahead.

2669 By Mr. BERNSTEIN:

Q. Now, P-135 for identification is a letter from you to Mr. Koessler, and this is dated December 17, 1959, and this is four years after the acquisition, and you say: "Dear Walter: Please let me know if you gave King Features a production increase for Youngstown, Toledo and Erie at the beginning of this year." Now, Greater Buffalo was printing Youngstown, Toledo and Erie, was it not?

A. Yes.

Q. Prior to 1955 Wilkes-Barre had been printing Youngstown, Toledo and Erie?

A. Some time prior to 1955.

Q. King took the runs out of Wilkes-Barre and put them in Greater Buffalo, is that right?

A. That is correct.

Q. And then you say: "I have in mind the possibility that if you did not increase your price to King, Mr. Nicht has an argument, maybe not a very good one, against an increase for us on the work we are doing for King." So that you were trying to conform your prices to King based on the price of Greater Buffalo?

A. Not exactly.

Q. What is that?

A. I was trying to get an increase from King, but if
2670 Buffalo didn't increase the price on those runs which it
took from us, I would have a much more difficult time
getting an increase from King.

Mr. BERNSTEIN: I offer P-135 in evidence.

Mr. RAICHLE: No objection.

Mr. STEVENS: Objection for NEA.

(Thereupon Plaintiff's Exhibit P-135, previously marked
for identification, was received and marked in evidence.)

By Mr. BERNSTEIN:

Q. P-136 for identification, Mr. Gorman, is a letter you re-
ceived from Mr. Koessler, president of Greater Buffalo Press,
on February 26, 1960. He says: "Dear Joe: I think it wise for
you not to raise your costs in the cases of Newark, Jamaica,
Houston and Binghamton until we do. We cannot raise the
prices until we get the second press going at Lufkin so that we
can print ten and fourteen pages and give these papers full
service. The Washington and Norfolk matters are matters for
you and Frank Nicht to work out. I can see that there likely
would be a problem at Norfolk." In the first paragraph Mr.
Koessler is talking about Newark, Jamaica, Houston and Bing-
hamton; was he talking about papers that you were
2671 printing for King Features?

A. I don't recall if we were printing Houston at that
time. We were printing Newark, Jamaica and Binghamton.

Q. For King?

A. For King. We were trying to get a production increase
from King, just a straight production increase to take care of
increases in labor rates, and Mr. Nicht asked us to refrain from
increasing Newark, Jamaica and Binghamton.

Q. You say "Mr. Nicht", do you mean Mr. Koessler?

A. Mr. Nicht asked me to refrain.

Q. Mr. Koessler said to you: "I think it wise for you not to
raise your costs—", is that correct?

A. That is what he said, I don't know why. Mr. Nicht didn't
want me to raise them for reasons of his own.

Q. This is a letter to you from Mr. Koessler?

A. That was following word I got from Nicht, asking me
not to raise the prices on Newark, Jamaica and Binghamton,
the same as I was raising them on others.

Q. In the last paragraph he says: "The Washington and Norfolk matters are matters for you and Frank Nicht to work out." What was he referring to?

A. Probably a price increase. I don't know whether we raised them or not.

Mr. BERNSTEIN: I offer P-136 in evidence.

2672 Mr. RAICHLE: No objection.

Mr. STEVENS: Objection for NEA.

(Thereupon Plaintiff's Exhibit P-136, previously marked for identification, was received and marked in evidence.)

By Mr. BERNSTEIN:

Q. P-137 for identification is a letter, dated July 5, 1956, from Mrs. Betty Voak to you. Who was Betty Voak?

A. I believe she worked for Buffalo at that time. I don't know whether she still does or not.

Q. At that time she wrote this letter in behalf of Greater Buffalo Press?

A. Yes.

Q. She says: "I am enclosing a list in duplicate of all the papers we print, the quantities of the runs and the average number of pages. If I can be of any further assistance, please advise." Attached to the letter is a list of names of the papers, the circulations, and the type of pages, is that correct?

A. I never read the list, I didn't know what it was about then, and I don't know now.

Mr. BERNSTEIN: I offer P-137 in evidence.

Mr. RAICHLE: From who to who?

2673 Mr. BERNSTEIN: From Mr. Koessler's secretary, Betty Voak, the circulation department, to Mr. Gorman.

Mr. STEVENS: Objection for NEA.

Mr. MOORE: We have no objection.

The COURT: Received.

(Thereupon Plaintiff's Exhibit P-137, previously marked for identification, was received and marked in evidence.)

By Mr. BERNSTEIN:

Q. The final matter, Mr. Gorman; going back to 1959, who in the printing field did you consider International's main competitors?

A. We had no competitors. King Features was—we were a contractor for King Features.

Q. I invite your attention to testimony you gave before the Grand Jury, October 11, 1960, page 959—

The COURT: You mean in light of this last comment, he had no competitors?

Mr. BERNSTEIN: That is correct.

The COURT: He said they had no competitors.

Mr. BERNSTEIN: I want to show a conflict in his 2674 testimony under oath on October 11, 1960.

Mr. RAICHLE: All the facts have been developed. It doesn't matter whether he characterizes them as competitors or not.

Mr. BERNSTEIN: It is important to show that Mr. Gorman regarded them as competitors, who he regarded as competitors.

The COURT: Go ahead.

By Mr. BERNSTEIN:

Q. You were asked this question: "Going back to 1954 who in the printing field did you consider your main competitor?", and what was your answer?

A. I said Greater Buffalo, and I meant production-wise, I knew nothing about the prices Buffalo was charging.

Q. The answer you gave was: "I would say Greater Buffalo Press was our principal competitor." Then on page 960 you were asked this question: "All right. Now, outside of Greater Buffalo Press who were your other competitors?" What was your answer?

A. "The other competitors were Eastern Color Printing Company, Waterbury, Connecticut; Southern Color Printing Company at Newport News, Virginia; World Color Printing

Company, Illinois; Acme Printing Company at San 2675 Bernardino, California; and the Buffalo Color Press."

Mr. BERNSTEIN: No further questions, your Honor. I offer in evidence——

Mr. RAICHLE: May I ask this, would you please read the statement at the top of page 961? Let me read it. "Answer: I can't say I was competing exactly because we were doing our work directly for King Features and I don't know whether King Features contacted those papers or not."

Mr. BERNSTEIN: That was a——

Mr. RAICHLE: Just a minute——

Mr. BERNSTEIN: That was an answer in response to other questions on page 960. I will continue reading from line 9.

The COURT: He is a printer. He said, "I don't know if King Features was involved, we are doing our printing."

Mr. BERNSTEIN: But the Government's contention is that he, as a printer, regarded other color printers as his competitors.

He regarded Greater Buffalo as his competitor, he
2676 regarded Buffalo Color Press——

The COURT: He had one customer and he was looking for business.

Mr. BERNSTEIN: That is correct, that is correct, he had one customer. When that customer switched over to another color printer, he felt that he was losing business, he was losing it to a competitor.

The COURT: Wait a minute, has the hue changed now, as far as Gorman is concerned?

Mr. BERNSTEIN: The hue does not change. Ever since I have been in the court room I have heard Mr. Gorman say——

The COURT: Does it change or doesn't it? Is Gorman a journeyman printer, printing to the best of his ability, or is he——

Mr. BERNSTEIN: He is printing only for King before Greater Buffalo bought it.

The COURT: He is now mixed up with Greater Buffalo, do you assign any guilt to him at all?

Mr. BERNSTEIN: Mr. Gorman's only guilt——

The COURT: I say guilt; any skullduggery?

2677 Mr. BERNSTEIN: His only skullduggery is he is very loyal to his employer and tries to present the matter in the most favorable light.

The COURT: He told you what he knows. It is simply this, either Gorman is out of the picture, as far as I am concerned, on knowledge, intent or——

Mr. BERNSTEIN: I take Gorman out of the picture, as far as intent or anything else, as part of this conspiracy.

The COURT: He is a good printer, right? Am I right?

Mr. BERNSTEIN: For the purpose of discussion, I would say, although I've never seen his printing, I will give him a blank check on that, your Honor. I offer P-138 in evidence, which is a composite stipulation of facts that have been in this matter.

Mr. RAICHLE: No objection.

Mr. STEVENS: No objection.

The COURT: You see the point, Mr. Bernstein, there comes a point when you, in your pursuit of the truth with
 2678 respect to this gentleman, cast an image of doubt, whether he is telling the truth.

Mr. BERNSTEIN: I cast an image of doubt, but I want to make it clear that I say this witness is coloring his testimony so that it would be most favorable to his employer. He is telling you the truth, not the whole truth. He is mixing up different events. That is what I charge Mr. Gorman with doing, out of loyalty to his employer and his desire to see that this case is resolved in his favor. When he is confronted with documents and statements that he prepared at the time, he doesn't deny it. He paints with a broad brush, a broad picture, and generalizes, and it doesn't give the Court the exact day by day picture of what was happening, and he was a witness to what was happening. That is his only role in this matter, your Honor.

2679 The COURT: The business rolled in when somebody started to do it by the numbers? Is that true?

Mr. BERNSTEIN: Yes, that is true. That same thing could have been done before had King not been violating the law by engaging in a conspiracy with Koessler.

(Thereupon Plaintiff's Exhibit P-138, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: I offer in evidence P-139 for identification, which is a Profit and Loss Statement of the Lufkin Division.

Mr. STEVENS: Objection.

The COURT: Let me ask you this, I might as well be honest. I don't know exactly what preregistry is. Apparently Koessler—this gentleman has been a life-long journeyman printer, it was important. Now, don't you think that is a better mousetrap?

2680 Mr. Bernstein: I think—

The COURT: I don't understand this thing. You claim they gobbled it all up. Now, is it true that they had the best method?

Mr. BERNSTEIN: I concede that.

The COURT: You say they were not willing to share with anyone else. Share the patent? What is preregistry?

Mr. BERNSTEIN: Mr. Feldman's explanation—

The COURT: What about this man?

By Mr. BERNSTEIN:

Q. Mr. Gorman, you knew what preregistry was?

A. I knew what it was but I didn't know how to do it.

Q. Mr. Koessler knows how to do it and do it more efficiently and effective than International knew how to do it?

A. We didn't know how to do it.

Q. Mr. Koessler knows how to do it better than any printing plant in the United States?

A. I would say he is the only one.

The COURT: Isn't that like a patent?

Mr. BERNSTEIN: It's a little different in that——

The COURT: There is no law?

2081 Mr. BERNSTEIN: It is a skill.

The COURT: He knows how to do things?

Mr. BERNSTEIN: He has a skill, he has a skill that is admirable.

The COURT: The only way you can make this case stand is tie-in, if he gives you the way to preregister these things you must tie in something else, and you say that is wrong?

Mr. BERNSTEIN: That is right?

The COURT: Have you proven that to me?

Mr. BERNSTEIN: Yes, your Honor.

The COURT: Where did you prove it to me?

Mr. BERNSTEIN: We have proved to you——

The COURT: Where have you proved to me that because Koessler is the only man that has preregistry, that can do it right—Lord knows what it is, I don't know myself, and long ago I learned not to share secrets—he does it right. Now, what is wrong except he tied in his knowledge, you claim, this preregistry, to what, King Features?

Mr. BERNSTEIN: Yes.

2082 The COURT: Where is the proof of that?

Mr. BERNSTEIN: The proof is this——

The COURT: Nicht is dead, King is out——

Mr. BERNSTEIN: No, they are not out, they are able to be brought in. They are subject——

The COURT: They are not here today.

Mr. BERNSTEIN: They are subject to the jurisdiction of this Court.

The COURT: They are not here today. To me it is a big zero. Who is going to prove what you claim, there is a tie-in?

Koessler knows how to do it, King is out, where am I going to get the proof?

Mr. BERNSTEIN: You have it in the record.

The COURT: You are going to tell me about it?

Mr. BERNSTEIN: We will do that.

The COURT: Give me a hint where it is now.

Mr. BERNSTEIN: The hint is this; Greater Buffalo—Koessler, by his better mousetrap, by his skill in having preregistry, had the opportunity to compete against King who had the 2683 features. But instead of that he made a deal with King which said, "I will take——"

The COURT: Now, he made a deal, how? Where is the deal? He made a deal, where is that?

Mr. BERNSTEIN: You have Nicht's deposition in evidence, and Nicht testified in deposition, which is the same effect as if he were on the stand under oath testifying, and his testimony under oath is that he made certain deals with Koessler, and that was that he would take certain runs and Koessler would take other runs. This relationship——

The COURT: Koessler was knocking his head off in printing.

Mr. BERNSTEIN: That is why he made the deal, King made the deal.

The COURT: All right.

(Thereupon Plaintiff's Exhibit P-139, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: P-140 marked for identification is a 2684 Balance Sheet of Southwest Color Printing Corporation, December 31, 1959. I offer it in evidence.

Mr. STEVENS: Objection for NEA.

(Thereupon Plaintiff's Exhibit P-140, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: I have no further questions of this witness.

Mr. RAICHLE: I have one or two, if I might. I hope it is all right with Mr. Stevens. There is a little repetition, and I want to be sure there is no confusion on this subject.

REDIRECT EXAMINATION

By Mr. RAICHLE:

Q. Subsequent to the purchase of the stock of International by Greater Buffalo Press, and during the years that intervened down to date, has Eastern Color Printing Company taken

runs of color comes away from Greater Buffalo and from International?

A. They have taken them from International through 2085 King Features, one very large run.

Q. What is that?

A. Garden City News Daily, which is close to the 500,000 circulation.

Q. And that is since Greater Buffalo has owned International, that account and others have been taken away?

A. Yes.

Mr. BERNSTEIN: Can we have the date on that?

The COURT: Wait a minute, what did you say, Mr. Bernstein?

Mr. BERNSTEIN: I wanted to get the date of that.

Mr. RAICHLE: I'm sorry, I don't know the date.

The WITNESS: Since 1955, I don't remember the date.

The COURT: They have it now?

The WITNESS: They have it now.

The COURT: 500,000?

The WITNESS: Between 400,000 and 500,000.

By Mr. RAICHLE:

Q. Star Color Printing Company in Wilmington, Delaware, they were in business prior to 1955?

A. That is right.

Q. And are they in business today?

A. Yes, sir.

2086 Q. And do they compete with Greater Buffalo?

A. They took from King Features, and thereby from us, the Raleigh News and Observer.

Q. Since the purchase by Greater Buffalo Press of the stock of International Color Printing, Star Color Printing Company of Wilmington has taken runs away from International, right?

A. Formerly printed by us, the Raleigh News and Observer.

Q. The Raleigh News and Observer is the one to which you refer?

A. Yes.

Q. Does Star Color still have that business?

A. Yes, sir.

Q. Southern Color Printing Company, we have been over that, but just to touch it once more, that company was in business prior to 1955?

A. Since 1946 or 1947.

Q. That is the company that Hornaday went with?

A. That is right.

Q. Still in business?

A. Yes, sir.

Q. And that has taken business away from you since Greater Buffalo bought International Color Printing?

A. At least 2,500,000 four-page sections.

2087 Q. That taking away has been the subject of testimony on the hearings apropos of lifting or relaxing the injunction?

A. Yes, sir.

Q. Has King Features taken any business away from Southern Color Printing to compensate for these losses, as far as you know?

A. Not to my knowledge.

Q. Now, was World Color Printing Company of St. Louis in business prior to 1955?

A. Yes, sir.

Q. And is it still in operation?

A. Yes, sir.

Q. Is it a large operation?

A. Very large, very successful.

Q. They print color comic supplements?

A. They print not many color comic supplements, they are fully equipped to do it, but they print a great amount of commercial work, offset work, very profitable.

Q. It is a large operation to which anybody could turn who wanted color comic supplements?

A. They could.

Q. And have them printed there?

A. That is right.

Q. Bridgeport Color Press, was that in business before 1955?

2088 A. That was in business before 1955 and is still in business today.

Q. Is that a source to which anybody could turn to get color comic supplements?

A. Yes, sir. There is one other also.

Q. Which is that?

A. Acme in San Bernardino.

Q. We have made reference to that. Is it still in business?

A. Still in business and have a new plant.

Q. A large operation?

A. A large operation.

Q. That is a source to which newspapers in the area can turn?

A. That is right.

Mr. RAICHEL: That is all.

Mr. STEVENS: If your Honor please, I have just a few questions.

CROSS-EXAMINATION

By Mr. STEVENS:

Q. Mr. Gorman, in your forty-odd years of dealing with Mr. Nicht you came to know his business attitudes very well, did you not?

A. I think so, yes, sir.

Q. And that included his competitive attitude toward
2680 other people who had color comics to license?

A. Yes.

Q. And particularly NEA?

A. I think particularly NEA, yes, sir.

Q. You were in court, were you not, on June 20th or June 30th when I asked Mr. Koessler some questions about Mr. Nicht, do you recall that?

A. I don't remember the questions, I'm sorry.

Q. Do you recall my asking him about Mr. Nicht's wanting to oust NEA from the color comic supplement field?

A. Mr. Nicht—do I recall that? Yes.

Q. Actually, that was a main objective with Mr. Nicht, was it not?

A. I think it was a main objective with all syndicates. He was a compulsive winner.

Q. You mean that he was a fellow that felt he had to win?

A. Yes, sir.

Q. And he played the game to the hilt, did he not?

A. Yes.

Q. Do you recall that Mr. Koessler described Mr. Nicht as implacable in his hostility to competitors?

A. I don't recall exactly those words.

Q. At any rate, that is pretty accurate, isn't it?

A. I don't want to use the word "hostility", he was determined to win.

2690 Q. There wasn't ever a time when he changed that point of view, that you know?

A. No, sir.

Q. In your survey in 1955 of the color comic supplement field, it is fair to say, is it not, that your investigation showed Buffalo Color Press or NEA to be a very small factor?

A. I don't remember the figures. It was quite a small percentage of the total.

Mr. STEVENS: Thank you very much.

The COURT: Any re-cross?

Mr. BERNSTEIN: One or two questions.

RE-CROSS-EXAMINATION

By Mr. BERNSTEIN:

Q. According to P-62 in evidence, Buffalo Color Press had 4.6% of the market under column 2, and under the column revised by Greater Buffalo Press, column 4, had 3.8% of the market, is that correct?

A. I don't know anything about that.

Q. That is what—you said you thought——

A. It was a small percentage.

Q. And P-62 in evidence shows it was 3.8%. You testified that Eastern Color took away some business from International?

A. Yes, sir.

2001 Q. And their percentage was 4.2%. And Acme Color took away business from International?

A. I don't know anything about those percentages, I didn't figure them.

Q. How about Southern Color?

A. I don't know.

Q. .6%.

The COURT: Did he make that chart?

The WITNESS: I had nothing to do with it.

Mr. BERNSTEIN: All right. No further questions.

Mr. RAICHLE: That is all, Mr. Gorman.

(Witness excused.)

The COURT: Gentlemen, what is the next order of business?

Mr. MOORE: I think we have concluded our case. We may want to offer just excerpts from depositions, one or two lines.

The COURT: Then you want to go on with NEA, right?

Mr. BERNSTEIN: I think Mr. Stevens——

The COURT: Do you have any surrebuttal in this case?

Mr. BERNSTEIN: No, your Honor.

2692 Mr. STEVENS: When Mr. Moore rests for Greater Buffalo we would like to renew our motion to dismiss the count under Sections 1 and 2 of the Sherman Act, and depending upon your Honor's point of view and disposition, we would then be prepared to go ahead with the testimony of Mr. Anderson.

The COURT: I will probably reserve decision on such a motion.

Mr. STEVENS: I would expect you would.

The COURT: Prepare yourself accordingly. Mr. Anderson is here?

Mr. STEVENS: Yes, he has been in attendance. We will be prepared to go forward with him.

Mr. BERNSTEIN: The Government would propose, if it meets with your Honor's approval, to cross-examine Mr. Anderson and then go into Mr. Anderson as the Government's witness, as far as the tie-ins of NEA is concerned, go right into that phase, unless Mr. Stevens——

The COURT: Except for a bit from Greater Buffalo, 2693 they are about through. You have no rebuttal on their case?

Mr. BERNSTEIN: That is right.

The COURT: We will go on with Mr. Anderson in the morning.

Mr. BERNSTEIN: We have one other witness beyond Mr. Anderson, Mr. Gamble, of NEA, on the tie-ins. I would assume that we should be able to finish tomorrow.

The COURT: Here is what I am going to do. We must get through some time. I will stay here until doomsday tomorrow if you tell me about five o'clock you think you can get through, otherwise I will have to use Friday. I mean, there is no use beating your head off Thursday night unless you hope to accomplish something. So we will evaluate that as we go along. Good night, gentlemen:

(Thereupon the Court was in recess at 4:30 P.M.)
2694 Proceedings of July 13, 1967, commencing at 10:00 A.M.

Mr. MOORE: If your Honor please, concluding the Greater Buffalo defense I would like to just offer in evidence and read one page of a deposition of Frank J. Nicht, taken at the behest of the Government, pursuant to the Federal Rules, on March 3, 1961, and on March 20, 1961. Your Honor will recall that parts of this deposition heretofore have been read in

evidence by the Government. I want to read just one page. I think it is probably easier to read it into the record than to offer it. Reading from page 144, beginning at line 23, a question directed to the witness by Mr. Feldman:

"Q. Do you recall testifying that King issues or offers no announced uniform price list in regard to either features or in regard to color comic supplement printing?

A. I think I said that.

2695 Q. Do you recall also testifying that the prices reached, whether they be as to features or whether they be as to color comic supplement printing, are usually arrived at after negotiations with the salesman and the particular newspaper publisher involved?

A. I got off there.

Q. All right. The prices reached as to sale of either features or color comic supplements are arrived at as a result of negotiations?

A. That's right.

Q. These negotiations are usually between your salesman or King Features Syndicate and the particular publisher involved?

A. That's right, sir.

Q. In the past have publishers gotten even better prices for features if purchased along with color comic supplements and, vice versa, gotten better prices for color comic features if they purchased features simultaneously?

A. Yes, sir."

Then finally, your Honor, we would like to incorporate in this record, not physically because the transcript is already
2696 done, make it part of the record the proceedings held before this Court on the occasion of the testimony taken on October 25th and 26th, 1961, in connection with the Government's application for a preliminary injunction, and the subsequent testimony and exhibits taken on, I believe, December 18th and 19th, 1962, in connection with the motion of Greater Buffalo to modify the preliminary injunction. As I say, I don't offer those physically, I would ask they be regarded as part of this record so that all counsel, without regard as to whether they offered the testimony or not, be at liberty to advert to it in their arguments presented at a later date to your Honor.

The COURT: What is your position on that?

Mr. BERNSTEIN: For the record I will state that I believe it is incompetent, but in the interest of saving time and expediting, rather than getting the witnesses here, we will not object.

2697 The COURT: I will receive that and consider it part of the record.

Mr. MOORE: We rest, your Honor.

The COURT: Now, you made some motions at the end of the Government case, as I recall, for dismissal.

Mr. MOORE: We would renew those motions at this time. I would expect that your Honor would prefer that these matters all be dealt with, if not at length, on a full scale in a brief and we later have oral argument?

The COURT: I think so. What did I do on your motion, reserve or deny?

Mr. MOORE: You reserved, your Honor.

The COURT: I did the same with NEA?

Mr. STEVENS: Yes. We would like to renew our motions at this time.

The COURT: Same ruling, I will reserve again on the motions.

Mr. STEVENS: Thank you, This is a folder of material which we will offer as an exhibit.

2698 (Thereupon documents referred to were marked Defendant's Exhibits N-1 through 12 for identification.)

Mr. STEVENS: If your Honor please, NEA will call Mr. Earl Anderson to the stand.

EARL ANDERSON, called as a witness in behalf of the defendant NEA, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. STEVENS:

Q. Your full name and age, please?

A. Earl Henry Anderson, age 56.

Q. Where do you live?

A. I live in Cleveland, Ohio.

Q. Are you married?

A. Yes, married.

Q. What, if any, family do you have?

A. Six children.

Q. What is your educational background?

A. I was graduated from the School of Journalism at the University of Minnesota in 1932.

Q. And what business are you in?

A. I am in the newspaper feature business.

2699 Q. Is that with Newspaper Enterprise Association, Incorporated?

A. Yes, I am vice-president and business manager of NEA.

Q. That is familiarly known as NEA?

A. It is known as NEA.

Q. Was it formerly and actually named NEA Service, Incorporated?

A. Yes, it was for a long while known and formerly known as NEA Service, Incorporated.

Q. But—

A. Changed that to Newspaper Enterprises Association.

Q. Who owns NEA?

A. NEA is owned by the E. W. Scripps Company.

Q. What is the nature of its business?

A. Basically we are a newspaper feature service. We are a service organization for daily newspapers, primarily. Newspapers have their daily news, local news, wire news, from Associated Press and United Press, and they want to build up their newspaper with more features of general interest, and these are the type of features we supply, as a service, to the newspapers. This would include the daily comics they have, the editorial cartoons, the news background and feature material columned by a doctor, columned by a Washington specialist, all the
2700 features that newspapers need to put out a paper, except the local and wire news and, of course, the advertising.

Q. In the answer which NEA has filed it denies that it is a syndicate. Can you explain that to the Court?

A. Yes, I can. We are a newspaper feature service. We do not sell to the daily papers our features on a separate or syndicated basis. We go to newspapers, they become clients of ours, they obtain from us everything we produce for the daily newspapers, as opposed to selling features separately as the syndicates do.

Q. How do you describe the service or services which NEA sells?

A. Well, we describe it as a feature budget service.

Q. Is there something called a full service?

A. We have three different services. There is the full service,

and this includes most everything we produce for daily newspapers, for the larger papers. For the smaller papers, for their convenience, we divide this up into two smaller services; one is called the Pony Service, and this normally goes to newspapers of up to 4,000 circulation; and we have an Intermediate Service, the next size, that has a few more features in it, still much less than our full budget, and this normally is sold to
 2701 papers of about 6,000 circulation; and then the full service is our complete production for newspapers.

Q. Handing you a copy of Exhibit N-1, I will ask you if you will tell us what that document is?

A. Yes, this is a listing of all these features that we produce for daily newspaper publication, this is our full service.

Q. In other words, that is the brochure or informational matter which NEA has, describing its full service?

A. That is right, we sent it out to newspapers, and salesmen use it to show what NEA is offering to their clients in the full service.

Q. Will you look at the pink sheet, which is marked Exhibit N-2, and tell us what that is?

A. This is the sheet we sent to newspapers to show—to list for them the features that are in the Intermediate Service.

Q. That is the service which is available to newspapers with circulations between 4,000 and 6,000?

A. Up to 6,000 circulation.

Q. And here is one on a light yellow or buff sheet, which is marked Exhibit N-3, will you tell us what that is?

A. This is a listing we use, we send it to newspapers, our salesmen use it to show the newspapers the features
 2702 that are included in our Pony Service, which is sold to newspapers with up to 4,000 circulation, the small newspapers.

Q. Do I understand you correctly, that the object of these services is to enable a newspaper to publish in addition to the services that newspaper has, local news and a wire service?

A. That is correct. Now, the newspapers, of course, have all this material, they don't necessarily use all of it, but they have it there for their editor to select, to use as they wish. They may buy other features from the syndicates to fill in their requirements.

Q. How long have you been associated with NEA?

A. I have been associated with NEA for thirty years.

Q. What prior business experience did you have?

A. I was graduated in 1932, in the depression, I worked for small newspapers around Minnesota on circulation and advertising and promotional campaigns. In 1935 I joined the Minneapolis Star as promotion director, in the circulation, editorial and advertising fields. I left the Minneapolis Star in 1937 and came down to NEA.

Q. When you say "down to NEA", you mean you came to Cleveland, I take it?

2703 A. I came east to Cleveland.

Q. Down geographically. What have been your prior positions with NEA before becoming vice-president and business manager?

A. I was promotion manager of NEA from that time until I entered the Army in 1942. I was in the Army for three years as a combat correspondent for the Army Weekly. I returned in 1945 as assistant to the general manager of NEA.

Q. Now, you were, of course, connected with Buffalo Color Press, Incorporated, were you not?

A. Yes. In early 1953 I came up to Buffalo as general manager—vice president and general manager of Buffalo Color Press.

Q. Who was your immediate superior here at that time?

A. Mr. L. E. Herman. Leon Herman.

Q. He has since passed away?

A. Yes, he had a serious heart condition.

Q. Where was Buffalo Color Press located in 1952 to 1955?

A. They were on Carroll Street in Buffalo.

Q. Were those premises owned by Buffalo Color Press?

A. We leased the premises there, paid \$350.00 a month for them.

Q. What was the nature of its business in that period?

2704 A. We were in the business of printing color comic supplements and, also during that period, comic magazines, the insides of comic magazines.

Q. You mean comic books?

A. Comic books.

Q. What is a color comic supplement?

A. A color comic supplement is what we call a funny paper. It is a supplement in the paper, a section of the newspaper, that is made up of copyrighted features from one or more syndicates usually printed in four colors. It may be of various sizes,

four pages, six, eight, ten, twelve, or it may be of a tabloid size or full size.

Q. What is a readyprint?

A. A readyprint is a supplement in which one—in which two or more newspapers share the cost of setting up the section, of getting it on the press. We refer to it as a makeready. I believe the Judge referred to it as a setup charge, comparable to an engineering business. But the newspapers—two newspapers or more share the original makeready setup charge.

Q. Will you examine the item headed the Alice Daily Echo for Sunday, June 11, 1967, which is marked Exhibit N-4, and tell us if that is a readyprint produced by NEA?

A. Yes, this is a readyprint sold by NEA. It is sold 2705 to the Alice Echo in Alice, Texas, a nice little town in Texas. I think its population may be 20,000. However, the newspaper has a circulation that requires only 5,500 of this particular section. This is a six-page section, and this happens to be all NEA.

Q. Will you examine Exhibit N-5, which is headed Suffolk News Herald comic section, Sunday, June 11, 1967, and identify that for us?

A. This is exactly the same section as the previous one in content except the name of the paper has been inserted on the top and the date line changed. Suffolk is a Virginia city, about 12,000 population, between Norfolk and Richmond. I believe, and they buy about 7,500 of these every week.

Q. In other words, Exhibits 4 and 5 are wholly identical except for the name of the paper and the city of location in the case of the Suffolk, Virginia section, am I right?

A. That is correct.

Q. Do other small papers also buy this same section with the name change of the paper only?

A. Yes. On that particular run we may have about twenty-five of those small papers getting basically the same section.

Q. By "basically" you mean some of them get exactly 2706 the same?

A. Some get exactly the same.

Q. Some have a small change?

A. Some make a change of feature here and there.

Q. You say that Exhibits N-4 and N-5 contain comics which are licensed by NEA, am I right?

A. That is correct.

Q. Is that true of each of the comics appearing in those exhibits?

A. In these exhibits that is true of all of them, yes.

Q. Does NEA also have what has been referred to as an eight-page standard readyprint section?

A. Yes. This one is typical of the type of section we have. We have an eight-page standard section, we have a ten-page standard section, we have an eight-page—small eight-page tabloid section and sixteen-page tabloid section.

Q. Now, taking the eight-page standard section because that is closest to the six-page section which is in evidence; is such a section or can such a section be filled wholly with comics licensed by NEA?

A. No, we don't have—NEA has only twenty Sunday comics. The normal eight-page section will have twenty-two, twenty-three comics in it. So we can't, from NEA, fill up an eight-page section.

2707 Q. Will you examine Exhibit N-6, on green paper, headed Sunday color comics, and tell us what that is?

A. This is a list printed and prepared and sent out to newspapers, and used by our salesmen to list and describe the Sunday comics that NEA has available for sale, which the rights are for sale on these comics.

Q. Do other syndicates have more than twenty Sunday color comics for licensing?

A. Yes, some of them have more.

Q. Which has the most?

A. To my knowledge, King Features has the most Sunday comics for sale.

Q. Do you know how many?

A. They have about forty-nine or fifty Sunday comics, at least, for sale.

Q. And according to their advertising, some that sell in a very large number of papers?

A. That is right. They are in most of the big metropolitan centers.

Q. Which are those, can you name them?

A. Well, they are in New York, they are in Chicago, in Los Angeles, in Detroit, in all the large metropolitan areas.

Q. And which are the comics in the King line which are apt to appear or do appear in those cities, if
2708 you know?

A. The most popular comic is perhaps Blondie, Beetle Bailey——

The COURT: How about Joe Palooka?

The WITNESS: Joe Palooka is handled by the McNaught Syndicate.

The COURT: I wondered where Joe disappeared to. We never see him in Buffalo. That isn't one of yours?

The WITNESS: No, that is from the McNaught Syndicate. The only comic we sell in Buffalo is one to the Buffalo Evening News, I believe the Saturday News, Kevin the Bold, and the Courier-Express uses Carnival.

By Mr. STEVENS:

Q. How many syndicates or other feature organizations are there selling Sunday color comics?

A. Well, Editor and Publisher lists about 200 syndicates. Of those selling Sunday comics, I suppose there is 20 of them.

Q. And when you refer to Editor and Publisher, that is the magazine of the newspaper industry?

A. That is right, trade magazine.

2709 Q. Now, what is the effect on cost of being able to sell a color comic section which has become a readyprint to Alice and Suffolk, as shown in Exhibits N-4 and N-5?

A. Well, take the example of Alice. In this case we have been able to spread the cost of the makeready or setup charge over about 30, 40 newspapers, so that there is very little charge to Alice for the makeready of getting this section on the press. one is following the other, we stop the press only to put the heading on. Now, if Alice were to have a supplement entirely of their own, if there were no readyprint business in this country, Alice would have to go to a printer and say "Put this section on the press for me and print it"; this would cost about \$180.00 for the makeready charge. This syndicate, or whoever is selling, would have to pay and pass it on the newspapers. \$180.00 from Alice, Texas, is almost \$10,000 a year, it would be out of the question for them to have it. So this is the saving that comes to the newspapers by being able to have readyprint sections of one kind or the other going from Alice to Suffolk and on down the line.

Q. Where is the readyprint, exhibited in N-4 and N-5. printed?

A. That particular section is printed at Wilkes-Barre.

2710 Q. And are you able to ship the Alice section, Exhibit

N-4 from Wilkes-Barre to Texas and still deliver it there more economically than Alice could have it printed singly in Texas?

A. That is the interesting part of this business. In some cases the saving that you can make by having a readyprint section, absorb the makeready, allows you to jump over some of the geographical lines. You can save enough in some instances to print a paper in Wilkes-Barre, and deliver it way down to Alice, Texas. As a matter of fact, we have a section printed in Wilkes-Barre and delivered to Wenatchee, Washington, way out on the west coast. It happens that makeready saving is enough to overcome the delivery differential from another point on the west coast. This isn't true all the time, but it is an indication of the savings there are in this business. We are just completing an arrangement now to supply a comic section to Eureka, California, even further away, and bids were made there by Acme Color Print, by NEA for Acme, and for NEA out of Wilkes-Barre, on a six-page standard readyprint section. The savings on the readyprint section were enough to carry the delivery way out to Eureka. We have delivery problems once in a while but we get them there on time.

2711 Q. In other words, NEA, with reference to Eureka, placed a bid for the business on a readyprint section out of Wilkes-Barre and a section out of Acme down in San Bernardino, California?

A. Correct, and it happened that at Wilkes-Barre we had a makeready that more closely met the needs of this particular publisher than at Acme.

Q. To sum this up, without extending it, is it fair to say that without the opportunity to have makeready, to have readyprints, color comic sections would be prohibitive to most small papers?

A. It would be out of the question. There are other things newspapers can do, they don't have to have a color comic section, they can have a TV guide. They look at the cost of that compared to the newspaper supplement, or the cost of a weekend entertainment section, which they may print in one or two colors, as compared to the cost of the newspaper comic supplement, and these costs have to be in line.

Q. Returning to Buffalo Color Press; what percent of this business was attributable to color comic supplements generally or readyprints in 1955, if you recall?

A. In 1955 all of the Buffalo Color Press business was newspaper comic supplements.

Q. In other words, the comic book business you mentioned earlier had evaporated?

A. Yes. We had some comic books, it was quite profitable for a while, and starting after the war, 1950, 1952, 1953, this became a very competitive situation, lots of plants were printing them, newsprint was scarce, and Buffalo Color Press couldn't produce an entire comic book, we could do the inside, and then we had to do the inside, bind them, send them to J. W. Clement Company who printed the covers and put the inside in the covers and then did the stitching, and we were not in a good competitive pricing situation, and we lost all of our comics.

Q. How did Buffalo Color Press get its color comic supplement business in 1955?

A. In 1955 they came actually from three sources. NEA supplied us with about a third of our business in the readyprint. The Scripps-Howard newspaper Sunday comic sections, which we sold directly from Buffalo Color Press, accounted for about the other third. We had one metropolitan client, the Chicago Daily News, which Buffalo Color Press handled directly, and this one Saturday afternoon paper in Chicago accounted for the other third of our business, generally.

Q. With reference to the Chicago Daily News run; was Buffalo Color Press really adequate to print it?

A. No. We were in trouble with the Chicago Daily News toward the last because they wanted to get their—two things they wanted—we had to take the sections off the press, wrap them in bundles of about fifty in order to handle them and get them on the truck. Chicago Daily News wanted to get them on skids.

Q. In other words, what we call palletizing?

A. Palletizing is the word, yes. We just didn't have the room in our plant to do this. This was one problem. Also the Chicago Daily News was getting a little more advertising and they wanted to increase the size of this section from a sixteen-page tabloid section to a twenty-page tabloid section. We didn't have the facilities at Buffalo Color Press to print a twenty-page section, so we were heading for trouble.

The COURT: Excuse me, is that the type of thing you find inserted in the comic section, like an ad for cereal or something, there is a cartoon with it?

The WITNESS: Yes, the comic advertising is printed right in the section along with the comics.

The COURT: That was increasing in this newspaper 2714 and you were in trouble meeting their requirements?

The WITNESS: That is right, they wanted more pages. Comic advertising was important in the comic readyprint development. With the coming of TV, it hurt this business. NEA spent a good deal of time and money on promoting the use of Sunday comic advertising, through the advertising agencies, in order to help the industry as a whole. This was part of a contribution to it, and advertising is coming back.

The COURT: I suppose you mean that so much of this stuff is on TV, particularly it seems on Saturday morning, that satisfies the kids without the appeal of the color comics?

The WITNESS: That is right. The advertiser had so much money to spend, and if you are selling a cereal, you decide whether you can do better on the comic sections or on TV, TV being quite effective.

2715 By Mr. STEVENS:

Q. Will you describe the printing and related equipment Buffalo Color Press had, as you knew it, in 1955?

A. We had four presses, each one with—the biggest, the largest capacity was an eight-page standard section. These four presses were at least fifty years old. I know one of them didn't have a serial number on it, it was so old. Goss had started putting serial numbers on these presses fifty years prior. This was real old equipment, on the printing side. We had no typesetting facilities, no engraving facilities, no bindery, we had no warehouse, no room for storing newsprint or such.

Q. What about the rate of production on this equipment?

A. Well, the presses would run at about 6,000 per hour.

Q. Compared with what an up-to-date press would run?

A. I suppose today they run at least 30,000 an hour, perhaps better. But that allowed us to give good quality, a good-looking section, and we had many satisfied customers as long as we could turn them out.

Q. What about the maintenance and repairs on this old equipment?

A. We had no machine shop, no room for one. We were constantly besieged with breakdowns and problems of getting the sections out. This is a perishable business, the newspaper expects its comic sections there on the date, and you 2716 can't afford to deliver on the following Monday the sections that are supposed to be in the paper Sunday. That is a real pressing problem for any printer in this ready-print or supplement printing field, you've got to deliver.

Q. What had been the trend of earnings in Buffalo Color Press in the years say from 1952 down to 1955?

A. I came—

Q. Were they skyrocketing up?

A. The trend—I came to Buffalo in 1953 and the previous full year before I arrived the profits were \$50,000.

Q. What were they in 1955?

A. In 1955 they were less than \$17,000. I should have stayed home.

Q. Was any consideration given to modernizing the plant and equipment of Buffalo Color Press while you were associated with it?

A. Yes, there was.

Q. Over what period of time?

A. Well, from the time I arrived in 1953 until the time it was closed.

Q. And what was done?

A. Well, you start with the fact that you can't modernize or build in the location or the area where Buffalo Color Press was. There was no siding, it was small quarters, and so 2717 there was no chance to build or expand there.

Q. In other words, you had to have a whole new plant?

A. Yes, we did.

Q. Or a different plant, at least?

A. That is right. There was no chance of modernizing the old plant. We had to start thinking, if we thought at all, of going into a new plant, and we looked into this, and we came to the conclusion that anything we did in order to produce the kind of volume needed in this business would cost at least \$1,000,000.

Q. Was it practical or possible for Buffalo Color Press, from a business point of view, to make any such outlay?

A. No, we didn't have the volume to sustain a national size

plant, so it wasn't practical. From what we had to do, it wasn't practical for us to spend a \$1,000,000.

Q. From your point of view as business manager and, I believe, vice-president of Buffalo Color Press in 1955, what alternatives, business alternatives, did that company face?

A. One alternative was just to close up the business and notify our customers that we were no longer in the business and couldn't do the printing for them, that is one alternative. The

other alternative was, while we still had a going business, to sell it and take advantage of the assets we had.

Q. And that, of course, is what you did?

A. That is correct.

Q. And the assets of Buffalo Color Press were sold to Greater Buffalo, were they not?

A. That is correct.

Q. What were those assets that were sold?

A. Well, there was the physical plant, the supplies we had, the good will we built up with the customers in supplying them faithfully over the years with sections of good quality—

Q. By—

A. And the plant.

Q. And by good will you mean that business which was represented and being carried out in the Buffalo Color Press Plant?

A. Certainly.

Q. And how did you arrive at a price to put on, for example, anything like the business and good will which you were selling when this transaction occurred?

A. Well, we priced it, as you do in the market, at the very best price that the business would bring anywhere. Obviously, we had—if these assets weren't worth anything, we had to find

a printer who would do the job, deliver the comic sections faithfully and take care of the customers that we had.

Q. In other words, you had to be paid for the good will by somebody who could carry on the business and enjoy the benefits of it after the transfer.

A. Certainly, if the sections weren't delivered the good will we'd built up wouldn't be worth much.

Q. You took part, did you, in the negotiations for the sale of the assets of Buffalo Color Press?

A. Yes, I participated.

Q. When did they commence?

A. There had been some talk about it earlier, but the real talk about selling Buffalo Color Press started in, to my best recollection, early summer of 1955.

Q. And at that time did you have any knowledge that Greater Buffalo Press was negotiating for the purchase of International Color Printing Company?

A. No, we certainly didn't.

Q. When did you first learn of that fact?

A. The first I learned of it was from a letter Herb Walker wrote in early October.

Q. To refresh your recollection, was it October or August?

A. I'm sorry, August.

Q. And by the letter written by Mr. Walker, you refer to the exhibit marked P-51, dated August 2, 1955, do you not?

2720 A. Yes, that is right. This is the first knowledge we had.

Q. Mr. Walker was then in what position with NEA?

A. He was vice-president and general manager of NEA.

Q. He has since passed away?

A. That is right. Correction, he was president and general manager.

Q. Of course, the sale of the assets of Buffalo Color Press is reflected in the document marked Exhibit P-27, dated October 20, 1955, is it not?

A. Yes, that is the document.

Q. Returning to Exhibit P-51, you are the E.H.A. noted for a carbon at the bottom of the letter, are you?

A. That is right.

Q. I take it, to your knowledge, no one else in NEA had any information about Greater Buffalo's purchase of International before August 1955?

A. I am certain of that.

Q. Going further, did you know of anything at the time of your negotiations with Greater Buffalo for the sale of Buffalo Color Press about an alleged conspiracy between Greater Buffalo and King Features Syndicate to divide markets and/or fix prices on color comic supplements?

A. We had no idea.

Q. When did you first hear anything about such an
2721 alleged conspiracy?

A. The first time I heard about such a conspiracy was in connection with this case.

Q. In other words, when the complaint in this case was filed, you first saw it?

A. That is the first time I ever heard of it.

Q. To your knowledge, did anybody else in NEA?

A. No, nobody else.

Q. Now, what service did NEA—

The COURT: Excuse me. Did you ever hear anything in the wind about maybe an investigation along those lines before you got the complaint?

The WITNESS: No, sir. We heard a great many rumors about somebody going into Sylacauga, somebody going to Lufkin, we were busy chasing down those rumors about where the printing plants were going to start.

The COURT: You must have been startled when you were made a party defendant, something you had no dream about before?

The WITNESS: Yes, it was.

The COURT: There was nothing that was in the trade,
2722 as a rumor, that this was a likelihood?

The WITNESS: No, not to my knowledge.

The COURT: I take it then that NEA or any of its companies if there are more, never had anybody inquire of them in a manner that might lead to make you think there was an investigation going on?

The WITNESS: Not until the investigation actually started.

The COURT: After the complaint?

The WITNESS: After the complaint, yes.

Mr. STEVENS: I think, for the Court's information, I am not sure Mr. Anderson understood the question, Mr. Anderson was a witness in the Grand Jury investigation.

The COURT: I am not talking about that. Until the thing became obviously a proceeding with which you were concerned, there had been no preliminary investigation, a visitation by Government people to your office or anything?

The WITNESS: Well, yes, there was a visit to our
2723 office. We cooperated with the Government in the visit for our documents.

The COURT: That was the time when you became aware that there might be something in the wind; before that there was nothing that had been brought to your attention?

The WITNESS: We didn't become aware of this complicity that the Government is trying to develop between Greater Buffalo and King. We became aware of this so-called—our involvement in the features.

By Mr. STEVENS:

Q. What services, if any, did NEA render its customers whose color comic supplements were printed at Buffalo Color Press before the assets of that company were sold?

A. On the business NEA placed in Buffalo Color Press we were merely the printers and shippers. NEA did all the selling, all the servicing, they saw that the advertising insertions were handled, that the changes in the size of the run, the length of the run, was handled, and they called on the newspapers
2724 to see that the delivery was there on schedule. They did all the billing, all the collecting, we merely printed the sections and shipped them.

Q. NEA held the contracts with the newspapers?

A. NEA held the contracts with the newspapers.

The COURT: Excuse me, could I ask a question? Mr. Anderson, you were down here in Buffalo as I understand it, with Buffalo Color Press prior to the time that organization was sold to Mr. Koessler. Do you have any recollection of who first opened negotiations for the sale, how that came about, that is, was there an offer by you or your company or was it Koessler that made a pass to buy, or do you remember?

The WITNESS: I think it was kind of a natural coming together. We had come to depend on—Buffalo Color Press had come to depend on Greater Buffalo Press to some extent in helping us keeping the plant running. They had the warehouse of supplies, they had a machine shop, and we would on
2725 occasion call on them to help us out of difficulty, to get our presses going, and this became kind of a mutual getting together. Early—I'm trying to recall—early in 1955 when our plant had DC equipment, the power company told us they would not supply direct current, we had to put in alternators, and those—the week after they broke down, our plant was down, we had to move most of our production for that week over to Greater Buffalo, and this was kind of an eye opener when we got the billing from them, to see that it

really cost us more to print these sections. So this was a mutual coming together.

The COURT: Was that about the time you had the \$17,000 year?

The WITNESS: This was—yes, this was the last year, in which we were down to \$17,000 profit.

The COURT: All right.

2726 By Mr. STEVENS:

Q. You were saying that you found out it was really cheaper for Buffalo Color Press to have the runs printed by Greater Buffalo than to print it themselves?

A. It appeared that way. Actually, some of our prices were higher than Greater Buffalo's standard prices, that is why we made the \$17,000.

The COURT: I don't want to interrupt you, Mr. Stevens, but things occur to me, and since we have no jury, I hope you don't mind.

Mr. STEVENS: Surely, that is fine.

By Mr. STEVENS:

Q. You have described the services which NEA rendered to its customers whose printing was done by Buffalo Color Press. Do you know whether NEA has continued to render the same kind of service to such customers as it still has, of those listed on Appendix B, in Exhibit P-27?

A. Yes, NEA has continued to render the same service to all of these customers that they still have.

Q. Through whom does it render that service?

2727 A. It renders the service through its sales and service organization. NEA has a sales—a vice-president in charge of sales, a sales director, we have a readyprint clerk, we have seven salesmen around the country who render this service to the newspapers.

Q. Has that organization been substantially of the same structure over the last ten, twelve years?

A. Yes, it has.

Q. How did NEA enter the comic color supplement field, if you know?

A. Well, I don't know exactly. It goes back quite a long time, I think in the early thirties—I know it was before I was with NEA—we were in the business largely with a small eight-page tabloid comic section, going out to small newspapers, and from that we had quite a growth.

Q. Returning to Exhibit P-27, and Appendix B therein, has NEA lost any of the customers which it had in 1955 or that are listed on that exhibit?

A. Yes, I see some here that are no longer NEA customers.

Q. Could you name two or three of them, please?

A. Well, Kankakee, Rome, I believe.

Q. How about Kokomo?

A. Kokomo, Indiana and, oh, there is St. Augustine, Florida—

Q. That is sufficient. I would like to ask whether NEA 2728 receives any payment from Greater Buffalo or anyone else on these runs which it had at the time, had in Buffalo Color Press at the time of the sale of its assets, and which NEA no longer has as customers?

A. No. If NEA loses the paper as a customer, Greater Buffalo Press no longer ever makes payments for that customer, even though King may get it, it may go down to International, NEA isn't paid for that run at all.

Q. Would you name say a half dozen of the other feature organizations, whether syndicates or not, that are selling color comic features or licensing them?

A. The Chicago Tribune is selling comic sections, comic features; United Features is selling comic sections. Of course, King is selling comic sections, and Acme Color is selling comic sections, not features.

Q. Which is the largest of the feature organizations selling color comic supplements?

A. King Features is the largest.

Q. Which, in your experience, is the toughest competition?

A. King Features.

Q. How long has that been so?

A. That has been so for the thirty years I have been with NEA.

Q. Where, if you know, did King have its printing done in the early fifties?

A. In the early fifties they had it done, I am sure, in 2729 Wilkes-Barre, International Color Printing, and perhaps Peoria.

Q. And what knowledge did you have of the printing rates which King Features had at International at that time?

A. I knew they had an arrangement with International—I don't know where we came by the information—I knew they

had an arrangement whereby all the sections were priced at the same per thousand, regardless of the makeready that went into the section, regardless of the length of the run.

Q. And regardless of the page changes?

A. Regardless of the page changes. King paid International, to the best of my knowledge, so much per thousand regardless of the page changes, regardless of the length of the run.

Q. What effect did that have on the cost to King upon a short run?

A. On a short run it meant King, to the best of our knowledge and belief, had a lower price from International than we were able to get from any other printer in the country, including Greater Buffalo Press. On a short paper we had to absorb some of the makeready. If it were not on makeready, we had to pay it all. We had to pay \$10.00 per page for every time in an eight-page section a publisher wanted three different comics in there from somebody, we had to pay \$10.00 for that. To the best of our knowledge, King wasn't paying this.

Q. And how did your rates then for NEA with Greater Buffalo compare before and after the sale of Buffalo Color Press?

A. Basically, we figured at Greater Buffalo Press that we—King, at International, had the advantage on a run up to about 80,000, maybe 100,000. On a larger run we had the advantage. International had the advantage on a smaller run.

Q. Is that because on the larger run the makeready charge, which you had to pay with Greater Buffalo, was absorbed and spread over a larger number of units?

A. That is correct.

Q. In other words, to use the Judge's analogy, it is just as though you had a setup charge or a cost on a turret lathe, and instead of running one hundred pieces, you run ten, fifty or one hundred thousand?

A. That is right.

Q. And was the rate which NEA had with Greater Buffalo after the sale of Buffalo Color Press, the assets of Buffalo Color Press, the same as the rate which it had with Greater Buffalo before the sale of the assets of Buffalo Color Press?

2731 A. The rate was the same, with the payments made under the contract.

Q. It is a fact, of course, that NEA did have certain runs

printed by Greater Buffalo before the sale of the assets of Buffalo Color Press?

A. Yes. NEA was a customer of Greater Buffalo Press before we sold. We couldn't handle Buffalo Color Press. NEA was a customer of Greater Buffalo Press before we sold Buffalo Color Press.

Q. There has been a good bit of talk about a meeting at the Hotel Beverly in New York City. Did you attend that meeting?

A. Yes, I was at that meeting.

Q. To the best of your recollection, when was it held?

A. It was held either in the very late winter of 1955 or early 1956, to the best of my recollection.

Q. How did it come to be at the Beverly?

A. Mr. Walker, who was then our general manager, usually stayed at the Beverly.

Q. Who was there?

A. Mr. Walker and Mr. Koessler, Walter Koessler, Mr. Nicht and myself.

Q. What was said and by whom?

A. It was a short meeting. I don't recall what was said and by whom. I recall that Mr. Nicht—Mr. Koessler introduced Mr. Nicht to Mr. Walker. Walter Koessler, his
2732 testimony refreshed my memory that there was somebody else in the suite, a friend of Mr. Walker's in the suite, he was in the other room. Mr. Nicht came in, we stood in the hall and talked for such a short time, it was in the winter, Mr. Nicht didn't take off his coat, we just stood there a very brief time and—

Q. If you can't recall what was said by whom, what was the substance of what was said?

A. The substance of what was said was that we would have a truce, that we would not try for each other's business by price-cutting each other's business.

Q. You mean on existing readyprint runs?

A. Yes, on existing readyprint runs that NEA had, the existing readyprint runs that King had, we would stop the price-cutting.

Q. Did Mr. Koessler take part in that discussion?

A. I just don't recall. I know too that Mr. Walker was upset; King was using his features, he thought, to keep—using his printing to keep NEA comics out of the sections he printed.

I think he had that on his mind. I don't recall, past the introduction, what Mr. Koessler said.

Q. Between whom was the truce, as you describe it, 2733 made?

A. Between King and NEA.

Q. Was Greater Buffalo a party to that?

A. No, no.

Q. What function did Mr. Koessler serve at that meeting?

A. Well, Mr. Walker never met Mr. Nicht previously, I am sure.

Q. Had you ever met Mr. Nicht?

A. No. And so he introduced the two of them and also me.

Q. Mr. Koessler introduced Mr. Nicht and Mr. Walker and—

A. And me.

Q. Mr. Walker and Mr. Nicht and you?

A. That is right.

Q. To your knowledge, did Mr. Walker ever meet with Mr. Nicht again?

A. No, he did not.

Q. Did you ever meet with him again?

A. No, I have not.

Q. To your knowledge, did anybody else from NEA ever have another meeting or discussion with Mr. Nicht?

A. No, nobody ever had any contact with Mr. Nicht.

Q. You said that the understanding or truce was that you would stop price-cutting on each other's then existing ready-print runs, is that so?

A. Yes, Mr. Walker was concerned about the pressure that NEA was under at this time in the transfer— 2734 in the sale of Buffalo Color—he wanted to see if we could get a short time to find out where we were going.

Q. Did NEA actually adhere to that truce?

A. In some instances, yes, we did. Where we could really find a section where we could really swing it, we knew we had a good price, why we tended not to in sections where we really thought we had a chance to get the business.

Q. Did King adhere to the truce?

A. Not to my knowledge. I never saw any instance where they, to my knowledge, did. I know of some instances where they didn't.

Q. Is there a form, a written report, which NEA salesmen customarily use covering calls they make?

A. Yes, we have a form for a sales report.

Q. To whom are they sent?

A. They are sent first to the sales manager.

Q. And are those reports made in the regular course of NEA's business?

A. Yes, they are.

Q. How frequently?

A. Routine. Each salesman probably will write about 200 reports a year, and after he completes a trip he goes back 2735 and is supposed to write up the papers he called on.

Q. Referring to the exhibit marked P-36, dated January 19, 1956, is that such a report?

A. Yes, that is an NEA sales report.

Q. Who wrote it?

A. It was written by R. C. Whitehead, our salesman in the southeast.

Q. Is he still your salesman?

A. He is now partially retired. We have another salesman down there.

Q. There are initials typed in the upper right hand portion of exhibit P-36; is yours among them?

A. No, I don't see it, no.

Q. Regardless of that fact; do you recall seeing Mr. Whitehead's report, P-36, at or about the time it was received in Cleveland?

A. Yes, I think so. I was familiar with it.

Q. Now, it refers to a call which Mr. Whitehead made on the General Newspaper Group in the southeastern United States, does it not?

A. That is right. Their headquarters were in Atlanta.

Q. The document is headed General Advertising Service, Incorporated?

A. Right.

Q. What relation, if any, did that have to the General 2736 Newspaper Group?

A. The General Advertising Service, Incorporated, was a group set up by the newspapers to sell advertising for this group of newspapers.

Q. And did they also have a color comic section?

A. Yes, they had a color comic section.

Q. Having exhibit P-36 before you, can you tell us whether or not NEA could profitably have accepted the General Newspapers color comic section at that time on the terms offered?

A. I don't see how we could have. King here offered to give twelve comics free to this group of newspapers in connection with printing supplements, and NEA can't be in the business of giving away twelve comics free.

Q. What about page changes?

A. We were selling—already selling some comics down there. King offered to make page changes as they went from one newspaper to the other, so the sections were not exactly alike. One paper would change a page or two. King offered to do this, according to Whitehead's report, for \$5.00 for each page change.

Q. What was your price?

A. Our charge from Greater Buffalo was \$10.00 for each page change.

Q. In other words, your cost was \$10.00?

2737 A. Our cost was \$10.00, yes, for each page change in the face of a \$5.00 page charge that King was quoting.

Q. So that with reference to P-36, regardless of what Mr. Whitehead said, because of the giving away by King of twelve comics and their pricing the page changes at half your cost, you could not have profitably accepted that business anyway?

A. No, doing business on this basis would have been no good for us.

Q. Will you examine P-38 and tell me whether that is also a standard NEA form of salesmen report, which you have described?

A. Yes, that is a standard NEA salesmen report.

Q. What does it state and what sales representative sent it in?

A. This is another report from Mr. Whitehead, who is our southeastern salesman, and the date he wrote it is March 21, 1957.

Q. What community does it refer to?

A. Jackson, Mississippi.

Q. Now, would you turn to exhibit P-39, which is next in the book you have; and that is a copy of a letter dated May 1, 1957, to Mr. Whitehead from Mr. Walker, isn't it?

A. That is correct.

2738 Q. And it also adverts to the paper in Jackson, Mississippi, does it not?

A. It does, it adverts to the paper in Jackson, Mississippi. It refers to his earlier report.

Q. Now, are those two exhibits an instance of adherence to the Beverly truce by NEA?

A. Yes, I think they are.

Q. Do you know of any other instance of adherence to that so-called truce after May 1, 1957, which is the date of P-39?

A. No, that was—to my knowledge, that was the last time that we ever adhered or tried to adhere to the Beverly truce.

Q. Do you know of any other instance before May 1, 1957, but after the meeting at the Hotel Beverly, where NEA undertook to get a then existing King readyprint run?

A. Well, we certainly tried in the case of the Lima, Ohio News, and we made every effort to get that.

Q. Will you examine exhibit N-7, being a sales report dated March 21, 1956, from H. R. H. to the Cleveland office, and tell us whether that reflects the efforts to get business away from King in Lima, Ohio?

A. Yes, it does.

Q. And who was H. R. H.?

A. That was Hal Hanson, then our salesman in that area.

2739 Q. And——

A. We thought we had a good chance to get that.

Q. What does exhibit N-7 reflect?

A. Well, it reflects the fact that on March 21, 1956 we were actively trying to get a comic section that was printed by King at Wilkes-Barre.

Q. Was that the last effort to get the business at Lima, Ohio for NEA, away from King?

A. No, sir, that has been a continuing effort ever since.

Q. Will you look at exhibit N-8, being a sales report dated January 30, 1957 from J. W.?

A. That would be James Weiss, who was then our salesman in that area.

Q. Is that also a sales report on a customary form from an NEA salesman to headquarters?

A. Yes, a typical sales report.

Q. What does exhibit N-8 reflect?

A. It reflects we are still trying to sell a readyprint color comic section to the Lima, Ohio News, in spite of the fact it was still being printed by King.

Q. Would you examine still further a sales report dated May 28 and June 3, 1957, from Mr. Weiss, and tell me if that is also on the standard reporting form which your salesmen used?

A. Yes.

2740 Q. And what does that reflect?

A. It reflects that the contract had renewed with King and we were marking it up for a followup, to try to get the business next time that the King contract expired.

The COURT: You are still talking about Lima?

The WITNESS: Yes, sir.

By Mr. STEVENS:

Q. Did you follow it up still further, do you know?

A. Yes, we have.

Q. You saw each of exhibits N-7, 8 and 9 at or about the time of their receipt in the home office?

A. Yes, I have seen those.

The COURT: I thought maybe we would take short recess now.

(Thereupon the Court was in recess at 11:20 A.M.)

(Proceedings resumed, pursuant to recess, commencing at 11:50 A.M.)

By Mr. STEVENS:

Q. Mr. Anderson, we had just discussed prior to the
2741 recess, the efforts of NEA after the meeting at the Hotel Beverly, and before May 1, 1957 to obtain a then existing readyprint run in Lima, Ohio. Do you recall another instance or any other instance when NEA did that during that period?

A. I recall at least one, that was Lewiston, Idaho, where we were actively trying to get a King run.

Q. Who was the NEA representative there, if you recall?

A. That would be Sherman Montrose at that time.

Q. Handing you what has been marked for identification as N-10, dated October 15, 1956, I will ask you to tell us what that is?

A. This is a usual form of memo used by our salesmen when they are reporting a followup on a particular situation. Some-

times they use the regular report form and sometimes in following up they write memos to the sales manager. This was one of the memorandums.

Q. And is that a document which was received in the regular course of business?

A. Yes, that was received in our usual course of business.

Q. Do you know where the original of N-10 is?

A. No, I don't know where the original is.

Q. Where was that document, itself, obtained?

A. This was obtained from Sherman Montrose's file, in his office on the west coast, in San Francisco.

2742 Q. Did you become familiar with N-10 at or about the time of its receipt in Cleveland?

A. Yes, I would have been familiar with it.

Q. What does N-10 show as to activities of NEA in Lewiston, Idaho?

A. It shows we were actively, in October 1956, trying to take a run away from King Features.

Q. By run you——

A. I mean——

Q. You mean an existing readyprint run?

A. That King held, yes.

Q. Were you successful in that effort, if you know?

A. I don't recall whether we sold Lewiston at that time or not.

Q. Whether you did or not, you were actively engaged in soliciting and undertaking——

A. Yes, we were.

Q. Was that true at other points during the same period for NEA?

A. Yes, we were potshotting where we could at King's business.

Q. Now, did NEA ever take any affirmative step to advise its sales personnel not to follow the so-called Beverly truce?

A. Yes, we did.

2743 Q. When was that done?

A. Oh, that was done in—I don't recall the exact date we did it—I remember we wrote a memo telling them we were getting runs whenever and wherever we could.

Q. Will you examine exhibit N-11 and tell me whether that refreshes your recollection as to when the salesmen were advised in writing?

A. Yes. October 29, 1958.

Q. And was the advice to the salesmen given in the memorandum reflected in exhibit N-11?

A. Yes, this is the memorandum that was written to the salesmen.

Q. Who wrote that memorandum?

A. This was written by William Borglund.

Q. What is his position?

A. He is vice-president and manager of sales.

Q. Did you have any part in the preparation of N-11?

A. Yes, I did.

Q. Tell us what it was.

A. We normally sent out on a routine basis a list of all the readyprints we have on the presses so the salesman can, when he goes to a newspaper prospect, show him the various ready-

2744 prints we have, the makeups. It was time for this to come out, and I told Bill Borglund—at that time, as a salesman, he had never been in favor of any of my efforts to get a little breathing time on this printing business, to find out where we were—where we were going, and on the price of these things, and so he never agreed with it, and this was an instance where I told him, "Bill, put it in writing, this is gone, let everybody know about it and have no doubt about it." I believe I took it over to you and asked you to take a look at it for me.

Q. I don't want to testify, but I believe you are right. You refer to this document and to sending out a listing, showing the current makeup of all NEA readyprint runs in the first paragraph; just tell us what those listings of readyprint runs were again?

A. Well, as I previously said, we have on the presses ready-print runs in various sizes, eight-page tabloids, eight-page standards, the sixteen-page tabloid, the six-page standard, the ten-page standard, and this listing that we sent out at this time for the information of salesmen showed the makeup of each one of these sections that was on the presses, so that when they went to the newspapers and the newspapers said, "Yes, I would like a readyprint section", we would say, "We can save you money if you can conform your requirements to something close to what we have on the presses." So the salesman

2745 would take the list of all makeready we had on the

presses in all the various plants and go over it with the newspaper. That was a working tool for them. This is a sales engineering job a salesman would do on selling readyprint. It involved the transportation of the sections, showing the publisher it will be there Friday so he can deliver it Sunday, seeing that his advertising is handled properly and printed so the advertiser doesn't complain about the quality of the section, all these things, and this is one of the tools they used in promoting the sale of readyprint color comic sections in this country.

Q. So that the first paragraph of N-11 refers to the transmittal of a regular working tool, prepared in the central office of NEA and sent out to the salesmen?

A. That is right.

Q. Now, the second and third paragraphs are the paragraphs which refer, are they not, to a termination of any notion that there should be further adherence to the so-called Beverly truce?

A. That is right.

Q. Was that memorandum sent to all your salesmen?

A. Yes, it was sent to all salesmen.

2746 Q. And to your knowledge had there ever been any adherence by NEA to the so-called Beverly truce since October 29, 1958?

A. There has been absolutely no adherence to the Beverly truce after this date and very little prior to that date. This was just putting it in writing so that everybody would understand it.

Q. I believe you told us that you knew of no instance of adherence after exhibit P-39, dated May 1, 1957?

A. That is right, the one in Jackson, Mississippi. That is the last that I recall at all. I am sure that is right.

Mr. STEVENS: Your Honor, I have not offered yet the other exhibits. I would like to offer this out of order at this time so that I may read it to the Court.

Mr. BERNSTEIN: I have no objection to all the exhibits going in evidence.

Mr. STEVENS: Fine.

The COURT: I assume you have no objection to any of these exhibits, Mr. Moore?

Mr. MOORE: None.

The COURT: Received. Mark them all, and you can read that, if you please.

2747 (Thereupon Defendant's Exhibits N-1 through N-11, previously marked for identification, were received and marked in evidence.)

Mr. STEVENS: This is dated October 29, 1958, memorandum to all salesmen. "Dear Fellows: Here is your copy of our newly compiled listing showing the current makeup of all of the NEA readyprint runs. Please remember that this list is confidential, and that you should destroy your old one dated February 1, 1957. You can use this list most effectively as a reference in working up new sections to sell other newspapers. It has come to my attention that some of you have the notion that NEA does not want you to solicit readyprint business wherever that kind of business can be had at a profit. This memo will make it clearer to all of you that NEA wants you to solicit and obtain readyprint orders wherever such business can be found 2748 and wherever it can be handled properly. Sincerely W. H. B."

By Mr. STEVENS:

Q. I would like to ask you to examine certain exhibits which have been introduced in evidence on behalf of the plaintiff, and let us turn first to P-42. This is a letter, as you see, dated March 4, 1960, from you to Mr. Kenneth Koessler, regarding Sioux City, Iowa Journal. Will you tell us the circumstances under which that letter was written?

A. The Sioux City, Iowa Journal—this is a paper in Sioux City, Iowa—was buying a ten-page section from us, a 56,800 run. We had a cancellation here and they appeared to have a quotation from King that was so low we could not understand it. So I wrote to Kenneth Koessler at Greater Buffalo and told him that we were under price troubles here and that we would be able to keep the business by selling the paper at—getting a printing quotation from Greater Buffalo of \$15.82 per thousand, which was under their standard pricing.

Q. And did you—

2749 A. In other words, I asked for an exception to the standard pricing.

Q. And did you get that pricing and sell that section?

A. Yes, we got the pricing, we continued to print the Sioux City, Iowa Journal.

Q. Was your competitor King Features?

A. Yes, our competitor was King Features. It goes without saying.

Q. Does that letter have anything to do with the so-called Beverly truce?

A. No, this has no reference at all to the Beverly truce.

Q. As a matter of fact, both NEA and King were bidding and bidding hard for the Sioux City, Iowa Journal business?

A. That is right. That was merely an effort on our part to get a price which we could retain the run with.

Q. In the last paragraph of P-42 there is a reference to Fargo, North Dakota, the Fargo Forum, I believe it is?

A. Yes.

Q. Tell us what that is about?

A. We had the Fargo, North Dakota Forum as a customer for color comic sections.

2750 Q. Was that a —

A. That was —

Q. A readyprint one?

A. That was a readyprint run. It was on the same run as the Sioux Falls paper. Now, the only connection between these two papers at all is the name Sioux. Sioux City, Iowa is a town in Iowa, it is on the confluence of the Big Sioux and the Missouri River. Sioux Falls is in South Dakota. There is no connection here between these papers.

Q. Just a coincidence of similarity in names?

A. Yes. I wanted to get—Mr. Bernstein seemed to be confused about that—I wanted to make that clear.

Q. Now, you were just saying that you had a cancellation there?

A. That is right.

Q. Now, would you turn to P-43, the next exhibit, which is a letter dated March 15, 1960, from Walter Koessler to you?

A. Yes.

Q. Is that a reply to P-42?

A. The third paragraph is a reply to Fargo and Sioux Falls, which I mentioned in the last paragraph of my earlier letter.

Q. Examining the first two paragraphs of P-43; had you asked either Mr. Walter Koessler or Mr. Kenneth Koessler to talk to Mr. Nicht about his competitive practices around the date of that letter?

2751 A. No, no, I hadn't asked him to talk to Mr. Nicht at all. I told him that—in connection with Sioux City, Iowa—that we needed this special price in order to hold the run there.

Q. Now, who was your competition in Fargo?

A. That again was King Features. The salesman was a man named Rabinow.

Q. What is the reference in P-43 to "in excess of 100,000"?

A. Here, Mr. Koessler says, "Fargo and Sioux Falls go together, as I understand it, and the combined circulation is in excess of 100,000." What he was referring to here is that Fargo and Sioux Falls, South Dakota were in effect a readyprint run. These two papers—the makeup of the two papers was similar and it ran with one makeready, divided between the two papers, with one makeready cost, one setup cost, divided between the two papers. Our printing price was cheaper than if we had bought it for each of the papers. What Mr. Koessler is saying here is that 'when you have a run of 100,000 as a readyprint I am sure your printing prices should be competitive with what

King Features is getting out of International Color 2752 Printing.'

Q. Is this an illustration of what you told us earlier, that on short runs up to sixty or eighty thousand, King had the advantage on its flat rate price at International, but that you caught up with it and surpassed it at about that figure?

A. Yes, this is a perfect illustration of that. Mr. Koessler confirms that. If we get 100,000 with no page changes and divide the makeready between two or more papers, we are in a fighting position.

Q. Is that what you understood his letter to mean when you read the next to last paragraph "This job should present no problem competitively"?

A. Precisely.

Q. As vice-president and business manager of NEA, did you ask to have and request of your staff the preparation of a list showing NEA runs which King Features attempted to take away from NEA during the period from 1956 on?

A. Yes, I did.

Q. Did you also ask to have the same kind of information prepared as to runs which NEA attempted to take from King?

A. Showing the runs NEA attempted to take from King, yes.

Q. Did you further ask to have actual runs taken by 2753 NEA from King turned up?

A. Yes, I did.

Q. And the reverse, NEA runs taken by King?

A. Right.

Q. Were there instances where there was a surging back and forth?

A. Yes, there was some ping-ponging. We lost one to King, King took it from us, we got it back.

Q. Would that be reflected in King runs taken by NEA, then retaken by King?

A. That is right.

Q. And NEA runs taken by King and retaken by NEA?

A. Right.

Q. And were there any triple plays, where King took an NEA run, or vice versa, and it was retaken and retaken again?

A. I recall Key West, Florida bounced around pretty good.

Q. Would you examine exhibit N-12, and tell us whether or not that is a compilation of the lists, prepared at your request and under your direction, on the types of runs we have just discussed?

A. Yes, this is the list we got up of the runs that King had attempted to take from us from 1956 until 1960. Now, I don't pretend or don't say these are complete lists. We had to go back in old files. These are certainly the ones on which we had tried—in which we had tried to take the business away from King. I am sure there were others. This goes back twelve, fifteen years.

Q. And which King undertook to take away from you?

A. Right.

Q. The first category on exhibit N-12 is headed "King runs NEA attempted to take"?

A. Yes, that is right. These were runs which King had, newspapers King was selling readyprint color comic supplements to, which we went in and made an aggressive effort to try to sell the newspapers an NEA readyprint color comic section.

Q. I believe there are ten?

A. I think we found ten instances. As I say, I'm sure there were more but—

Q. You say this first category terminates in 1960?

A. This terminated in 1960. I couldn't bring it up to date, I spent nights working on this, I got to do my work in the daytime, and help keep NEA running a little bit. I went from 1956 to 1960 to show the activities.

Q. I notice in N-12, the first two items under the first category, King runs NEA attempted to take are Lima, Ohio News and Lewiston, Idaho Tribune?

2755 A. Yes.

Q. Those are the two we just talked about?

A. We did mention those, yes.

Q. Under the heading "2", NEA runs King attempted to take, I believe there are seven items listed?

A. Around seven, yes.

Q. On the next page of N-12—

A. There were more than seven. That is all I could find.

Q. —Item 3, King runs taken by NEA; which are those two?

A. Those are the Bloomington, Illinois Panagraph and the Gary, Indiana Post Tribune.

Q. Under Item 4, NEA runs taken by King, I see six items, including Rome, Georgia, that we have heard talk about here heretofore?

A. Yes, sir. We took that in 1956.

Q. King took it from you?

A. Yes, I meant King took it from us.

Q. I notice opposite the Springfield, Illinois State Journal and the Dubuque, Iowa Telegraph Herald there is a parenthesis, reciting that NEA attempted to retake, and giving a date; was that also reflected in your records?

A. Yes, it was certainly part of our records.

Q. Item 5 is headed "King runs taken by NEA and then retaken by King", and that lists Danville, Virginia,

2756 The Register?

A. That is the Danville, Virginia Register. We took that in 1962 and King took it back in 1965.

Q. Then in the sixth category, entitled "NEA runs taken by King and then retaken by NEA", there are two papers listed?

A. Right.

Q. What are they?

A. The Trenton, New Jersey Times which we took back, and the Sarasota, Florida Herald Tribune.

Q. The last item, number 7, "King runs taken by NEA then retaken by King then retaken by NEA", Key West, Florida is listed?

A. That is correct.

Q. And the date for that action was 1961, 1964 and 1965?

A. Yes.

Q. To the best of your knowledge, and from the records of NEA, is the tabulation set forth in Twelve accurate?

A. Yes, this is accurate, to the best of my knowledge.

Q. From your point of view as vice-president and business manager of NEA, how would you describe the competition presently existing between NEA and King Features for color comic supplement business?

A. It is rough and tough and it is never ending.

Q. That has been true for years?

2557 A. That has been true for years, that is for sure.

Q. Are you familiar with Exhibit P-33, dated March 29, 1957, from Mr. Whitehead, concerning the Jacksonville, Florida Times Union?

A. Yes, I am familiar with this.

Q. What was the background of that report, if you know?

A. Well, the Jacksonville, Florida Times Union, as I recall, was printing its own color comic sections. Mr. Whitehead was in there trying to convince them they ought to have a color comic supplement, the paper was too large for a readyprint. They had to carry their own makeready, they wanted the flexibility of being able to carry any advertising any place, anywhere, any features, make up their own sections in runs of 150,000, which was beyond the normal size run we are interested in. So he was in there trying to get this business for NEA.

Q. That is, that you were interested in as a readyprint?

A. That is right.

Q. What happened?

A. We were interested in this one as a color comic supplement, not as a readyprint. This was too big for a readyprint, too long a section.

Q. I take it there was an indication that Greater Buffalo was trying to bid directly on the business?

2758 A. That is right.

Q. And Mr. Whitehead was troubled by the fact that a project he had been working on might go to someone else?

A. Right, that is what did bother him, that he might lose the business.

Q. Who actually got the business for the Jacksonville, Florida Times Union?

A. It ended up that King Features actually got that business.

Q. So that this is an illustration in March of 1957 of competition among the three of you for a run which was going out of the newspaper plant itself to be printed outside?

A. Yes, that is right.

Q. And, at any rate, neither NEA nor Greater Buffalo got the business?

A. That is right.

Q. Are you also familiar with P-32, which is a letter, from Mr. Walter Koessler to you, dated December 5, 1956, concerning Albuquerque, New Mexico?

A. I am familiar with this letter.

Q. What happened with reference to the Albuquerque account?

A. This was never consummated. It stood where it was, Acme on the west coast.

2759 Q. Did NEA bid for the business?

A. Yes, we bid for the business.

Q. Did Greater Buffalo bid for the business?

A. Greater Buffalo bid for the business.

Q. And with both of you bidding it stayed where it had been for years, with Acme in San Bernardino, California?

A. That is right.

Q. Was what happened in Jacksonville, Florida or in Albuquerque, New Mexico the result of any agreement between NEA and Greater Buffalo?

A. No.

Q. As a matter of fact, to the contrary, it shows competition, doesn't it?

Mr. BERNSTEIN: I object.

The COURT: Overruled.

The WITNESS: Yes.

By Mr. STEVENS:

Q. Has NEA ever divided customers with Greater Buffalo, to your knowledge?

A. No, we haven't.

Q. Has it ever fixed prices on color comic supplements with Greater Buffalo?

A. No, we haven't.

Q. Turning to the language of the complaint; did
2760 NEA ever engage in a combination and conspiracy with Greater Buffalo, Hearst, Eastern Color Printing Company, and anyone else, in restraint of interstate trade and commerce, as charged in Paragraph 21 of the complaint?

A. No, we certainly did not.

Q. Did NEA ever enter into any agreement, understanding or concert of action with Greater Buffalo, Hearst, Eastern, and anyone else, to refrain from soliciting color comic supplement printing business from each other, as charged in Paragraph 22 (a) of the complaint?

A. No.

Q. Or to maintain and stabilize the price on color comic supplement printing in the United States, as charged in Paragraph 22(b) of the complaint?

A. No.

Q. Did NEA ever engage in a combination and conspiracy with Greater Buffalo, Hearst, Eastern or anyone else, to monopolize trade and commerce in color printing supplements, as charged in amended Paragraph 24 of the complaint?

A. No.

Q. Did NEA ever enter into any agreement, understanding or concert of action with Greater Buffalo, Hearst, Eastern or anyone else, to monopolize for Greater Buffalo the printing of color comic supplements and the sale of said printing services through the sales organizations of the defendant, as alleged in Paragraph 25 of the complaint?

A. No.

Q. Now, what of the so-called Beverly truce with Hearst?

A. That is long gone. It was ten, eleven, twelve years ago. It was in effect, partially, for a very short time. It has gone under the dam for ten years.

Mr. STEVENS: We have no further questions. We would like to offer the remaining exhibit, which I believe is N-12.

Mr. BERNSTEIN: I would like to request that acceptance of that be deferred until after cross-examination. I would like to question the witness regarding the preparation of that exhibit.

The COURT: Is that satisfactory?

Mr. STEVENS: It certainly is. I might say we have brought the underlying data. We thought, with the length of the proceedings we have had, it would be easier to prepare this list and have it available. We do have a vast amount of underlying cards, etcetera.

2762 The COURT: Well, see what Mr. Bernstein gets into. Maybe you will still have to back to it. There are two papers I have here, gentlemen. One of them I have been looking at over several days is P-100 in evidence. You may want that in

connection with talking with Mr. Anderson. The other one is P-73 for identification. This is a letter of Driscoll's, an intra-office letter, to Mr. Nicht. I haven't passed on that yet. Do you want that now? Don't forget to bring it up to me again. The other one is in evidence?

Mr. BERNSTEIN: Yes, your Honor.

The COURT: Would you like to take lunch before you begin?

Mr. BERNSTEIN: I would prefer that, if it doesn't inconvenience you too much.

The COURT: Give me a view now—I know it's difficult—do you contemplate we can finish today or are we going to need tomorrow? The reason is that I have a distress case of a
2763 soldier here on furlough who has a tort case against the Government. If we cannot plan on trying his case because this one comes first, I am going to tell the lawyers to take his deposition today, if they will consent to that. I would like to know whether you think maybe we can get through. If you have any doubts, I would rather have you say that.

Mr. BERNSTEIN: I have some doubts but that is because of my experience before. That is the only reason. Otherwise I would think we could get through. What time did your Honor intend to resume at, one-thirty?

The COURT: I thought so.

Mr. BERNSTEIN: Could we go to five?

The COURT: Yes.

Mr. BERNSTEIN: I think——

The COURT: We will do the best we can. I will have to tell these people what I can about their case. We will come back at one-thirty.

2764 (Thereupon the Court was in recess at 12:30 P.M.)

2765 (Proceedings resumed, pursuant to recess, commencing at 1:30 P.M.)

EARL ANDERSON, having been previously duly sworn, resumed and testified further as follows:

CROSS-EXAMINATION

By Mr. BERNSTEIN:

Q. Mr. Anderson, in your testimony this morning, you stated that your recollection was refreshed somewhat by something that Mr. Koessler had testified to concerning the Beverly Hotel meeting, and I wish you would please try to recollect the events

of that time, and I would assist refreshing your recollection by referring to testimony that you have given to the Grand Jury on this subject some six years ago. Now, at that time you testified——

Mr. STEVENS: Now, I object. Are you saying you are impeaching this man's testimony?

Mr. BERNSTEIN: No, absolutely not.

The COURT: He said he wanted to refresh his recollection, I take it, with a view of perhaps having whatever happened enlarged beyond what Mr. Anderson now recalls.

Mr. BERNSTEIN: That is correct.

2766 Mr. STEVENS: Do you have a copy of what you are going to use?

Mr. BERNSTEIN: Certainly.

Mr. STEVENS: Why didn't you give it to me before?

Mr. BERNSTEIN: We may not have to get into it, the witness's recollection may be refreshed on the stand. Let's try it this way. There is nothing objectionable about this procedure, your Honor.

By Mr. BERNSTEIN:

Q. Mr. Anderson, you testified as to certain events that preceded the Beverly Hotel meeting. Now, I ask you whether this refreshes your recollection. Is it your present recollection that after the sale of Buffalo Color Press, late in 1955 or early 1956 you met with Mr. Koessler at Hotel Statler here in Buffalo, and at the Greater Buffalo plant here in Buffalo, and the primary purpose of those meetings was to get from Greater Buffalo a lower price, a price as low as King was receiving from International, do you recall that?

A. This had nothing to do with Beverly. When were these meetings? This was in connection with the sale of the assets of Buffalo Color Press.

2767 Q. I am talking about after the sale of Buffalo Color Press, late 1955 or 1956, is it your present recollection that you then knew that King was getting a better price than you from International on the smaller runs?

A. Yes, we felt that the formula that had been in effect at International for the pricing of color comic supplements on the short runs penalized NEA; that in the longer runs we were all right. If we could have a readyprint section with no changes, perhaps we were all right. On the smaller runs we felt

that King had a better price and we were seeing some prices they were making at various newspapers that we had a hard time to parse out. There seemed to be price-cutting as far as we could determine, a pricing structure at International that didn't quite make sense.

Q. You felt they were having a pricing advantage and able to cut your prices because they were getting a better price than you were getting from Greater Buffalo?

A. On the short run where page changes were required. That is what I tried to develop this morning. This is historically true.

Q. Let's develop it further——

Mr. STEVENS: What time is this?

2768

By Mr. BERNSTEIN:

Q. This is late '55 or early '56, this is after the sale of Buffalo Color Press. Does this refresh your recollection; that the contract that you had with Greater Buffalo, that resulted from the sale of Buffalo Color Press, provided that NEA was to get as low a price as Greater Buffalo charges any other customer, is that correct?

A. This was right, it applied to Greater Buffalo Press, the price at Dunkirk or whatever plants they would buy, but it didn't apply to International Color Printing, which was a separate corporation.

Q. Perhaps it would be best to read your testimony. Would you please turn to page 750 of your——page 748 of your testimony before the Grand Jury, line 20. Reference was made in the question to the sale of——maybe we better go back earlier than that——let's take page 747, line 18. You were asked this question: "At the same time didn't it occur to you that Greater Buffalo Press would not want its two sales agencies, namely, the two syndicates, fighting over accounts which he already has and is servicing from either Buffalo or Lufkin or even potentially Sylacauga?" What was your answer?

Mr. STEVENS: I object. What is the purpose of this?

2769

Mr. BERNSTEIN: This is to refresh the witness's recollection as to the events that occurred in 1955 and 1956, and as he testified under oath in 1960.

Mr. STEVENS: Well, I think the proper way to do it is to read what it is and ask him if that refreshes his recollection; not

to have him read now as though it is his present answer to that question.

By Mr. BERNSTEIN:

Q. My question was, what was your answer then?

A. Mr. Bernstein, I have got—I can't place this question. What time are you referring to here?

Q. The question I read was at page 747, line 18, your answer was on page 748, line 1.

A. What meeting was this that you are referring to?

Q. Well——

A. I am trying to help but——

Q. All right, let's try it another way. On page 747 you are asked this question, line 10: "Wasn't it obvious to you that at the time that Greater Buffalo Press wanted both plants, namely, International and Buffalo Color Press——" —this is referring to Greater Buffalo's purchase of International—— "—— so that he could get more business, namely, be able to make and sell to you people more of the comic supplements?" Your answer was: "Sure, he wanted the printing that was in our plants."

A. That is what we sold to him.

Q. You were asked this question: "At the same time didn't it occur to you that Greater Buffalo Press will not want his two sales agencies, namely, the two syndicates, fighting over accounts which he already has and is servicing from either Buffalo or Lufkin or even potentially Sylacauga?" What was your answer?

Mr. MOORE: I object at this time, if this is being taken against Greater Buffalo. He is asking him a question, what occurred to him, how can that be binding on us?

The COURT: Now, the only point, as I understand it, that Mr. Bernstein is making is that there were meetings, a meeting at least, and he feels that Mr. Anderson at another time gave more details about such a meeting than he now recalls. I take it this is just to jog his memory.

2771 Mr. BERNSTEIN: That is correct.

The COURT: And see whether indeed he then recalled more details.

Mr. BERNSTEIN: That is correct.

The COURT: This is not received as his mental operation as to any intent of yours, unless he can quote from things your principal said or did.

Mr. MOORE: My point is, your Honor, if the detail he is trying to refresh him on involves a question of what occurred to him, I think—

The COURT: We have no jury. Supposing we hear Mr. Bernstein out in his efforts to do one thing, as I understand it, to get the full picture from Mr. Anderson, who now, Mr. Bernstein thinks, has forgotten some points.

Mr. BERNSTEIN: That is correct.

The COURT: We will hear it all. I will be glad to entertain your motion to strike if you think it serves another purpose.

Mr. MOORE: Very well.

Mr. STEVENS: It sounds find. I would suggest
2772 that in the two questions from page 747 which Mr. Bernstein read there is a reference to time, at the time and at the same time. What time is it?

The COURT: Let me make a further suggestion. Of course, it is cross-examination, and normally we are probing when we cross-examine, for something that your are anxious to bring out. Why don't you tell Mr. Anderson what it is that you are driving at, then refresh him, and I am sure that if he recalls it he will say so.

By Mr. BERNSTEIN:

Q. This is what I represent, this is what I conclude your testimony was before the Grand Jury, and we will test this out (later on, but for the purpose, I represent you testified to the Grand Jury under oath that after the sale of Buffalo Color Press, in late 1955 or early 1956 you met with Mr. Koessler at the Hotel Statler, and also on other occasions at his Greater Buffalo plant, and the purpose of the meeting was primarily to get a lower price from Greater Buffalo, the same
2773 price as you were having—that King was enjoying from International on the smaller runs, and you believed you stood to lose a lot of business through Kings's extremely low quotations, and your contract with Greater Buffalo provided that Greater Buffalo was to charge you as low as anyone else, and you knew Greater Buffalo had bought the International plant. Now, Mr. Koessler told you that he inherited the contract with King from International when he took over the plant, so that he and you both mutually recognized the desirability of prevailing upon King not to come in and take NEA accounts away, and Mr. Koessler later told you—this was before the Beverly Hotel meeting, that he had spoken

to Nicht about it, and that Nicht had assured Koessler that King would not come in and take NEA accounts, and that in late 1955 or early 1956 you met at the Beverly Hotel, and that meeting was arranged by Mr. Koessler, and you said that the purpose of the meeting was to agree that NEA would not take the runs currently printed by King Features service and that King Features service wouldn't take the runs currently printed by NEA service, and you left the meeting believing that King would not solicit any accounts serviced by

NEA, and Nicht expressed a willingness to do it, and you
2774 told Nicht it would not solicit his accounts, and Mr.

Koessler indicated that he was in favor of this. Now, that is—let's look at your testimony—does that refresh your recollection?

A. Maybe you can develop this out of it. I have no recollection of these meetings you talk about at the Statler or Greater Buffalo, outside of the meeting that we had when we were selling Buffalo Color Press.

Q. You have no present recollection of those meetings?

A. Of those. I am sure we talked to Mr. Koessler about it. Mr. Koessler, of course, felt in some instances we had an advantage on the longer runs, that if we could make makeready without too many page changes that this also——

Q. Do you recall talking to Mr. Koessler—before the Beverly Hotel meeting do you recall talking to Mr. Koessler and Mr. Koessler telling you that he spoke to Mr. Nicht and that Mr. Nicht gave him the assurance he would not take your accounts?

A. No, I don't recall that. Mr. Walker, of course, was in this picture also.

Q. I am talking about you.

A. No. What I recall is that Walter Koessler did arrange for us to meet with Mr. Nicht.

Q. You do recall that it was a short meeting, that is
2775 what you testified here? I am trying to——

A. Yes, I understand.

Q. I am trying to ascertain whether the reason it was short was because you had learned from Mr. Koessler before that this is the way it was going to work out, this was just a confirmation by Nicht of what you believe had already been agreed upon?

A. I don't know what Mr. Walker felt—I know——

Q. Let's look at your testimony, let's look at page 750. You

talk about the discussions in Buffalo at the Statler, and the only reason I went back to——

A. Weren't those in connection with the sale of Buffalo Color Press?

Q. Let's look at page 749. On page 749 the time is fixed in late 1955 or early 1956. The sale of Buffalo Color Press was not in early 1956, that was in late 1955, is that correct, it was October 1955?

A. Yes.

Q. Let's look——

Mr. STEVENS: On that point, your Honor, P-27 shows specifically that although the contract for the sale of the assets of Buffalo Color Press was executed in late October of 1955, it became effective, as I recall, on or about January 11, 1956.

By Mr. BERNSTEIN:

Q. Let's go back——

A. I had a—we had supplies to sell, determine what they were, what the newsprint situation was, and these were in connection with the sale.

Q. Let's go back to page 748. On page 748 there's questions concerning NEA's soliciting King's account and King not soliciting NEA's account. Let's go back to page 747 to see if we can fix the time, and so we get back to the first question that led to these series of questions, and the first series of questions that led up to this is the sale or the purchase by Greater Buffalo of International, that is on page 746—no, that is the sale of Buffalo Color Press to Greater Buffalo. Look at line 6. The question was put to you: "Let me put this to you. In effect then, by selling Buffalo Color Press to Greater Buffalo didn't you then have a situation where you had one supplier with two key types of salesmen, namely, NEA and King, selling his products throughout the country?" Then you answered: "Well, they also sell directly, of course, and there are other plants around the country." And then the question: "That is right. Basically what he acquired would be two acquisitions, two key sales syndicate organizations, is that correct?" And then the answer: "That is right." Then the question: "And these were the two formidable syndicate organizations in the country in regard to the sale of color comic supplements?" Then the answer: "Yes, that's right."

A. That's right. I wish I was as formidable as it reads there.

Q. "Carrying this a step further, didn't it seem to you and, perhaps, Mr. Walker at the time that Mr. Koessler or Greater Buffalo Press wished the two sales syndicates to promote, at all costs, the sales of the color comic supplements which Greater Buffalo Press would be making?" Your answer is: "No, there were other plants in the country. We did see that he was growing bigger certainly, that he was getting lots of the supplements. There were still other printers left, but he was getting large, we saw this." Is that correct, is that answer correct?

A. It would seem so.

Q. You were asked this question——

A. I don't understand, I thought you were putting me in the framework of time here.

Mr. BERNSTEIN: I'll withdraw the question and
2778 move that the answer be stricken.

Mr. MOORE: I move the question be stricken and the reading of it. He isn't doing what he said he would do.

Mr. BERNSTEIN: We are trying to refresh the witness's recollection.

Mr. STEVENS: You have no right to ask him then "Is that correct".

Mr. BERNSTEIN: I withdraw the question and move it be stricken.

The WITNESS: What do you want me to recall? You made a wrong statement there.

By Mr. BERNSTEIN:

Q. I am trying to have you recall that before the Beverly Hotel meeting you had a discussion with Mr. Koessler, and Mr. Koessler told you that—and that discussion was about price—and Mr. Koessler told you that he could not reduce your price at Greater Buffalo Press, and that he inherited the contract between International and King, so that is implying he could not consider King's price and, so therefore, the way to resolve the problem was to have King agree not to solicit NEA's accounts, do you recall that?

A. This is a further development you put on it. I have
2779 no question, I tried to make it clear, we were constantly in discussion with Greater Buffalo Press about the pricing of readyprint color comic supplements. They were our contractor, we were contracting our printing, and we wanted to get our price as low as we could. We saw we were starting to lose

out, and this is the reason we were looking for breathing time to get our—find out what was going on in the printing business.

Q. This discussion was after the sale of Buffalo Color Press and before the Beverly Hotel meeting?

A. This discussion went on from the time it was—from October in a course until the plant was finally delivered, the business was finally delivered to them early in 1956. As a matter of fact, it still goes on. We are not any God's children to printers, we try to get as low a rate as we can.

Q. So the simple answer is that it was before the Beverly Hotel meeting?

A. What was?

Q. Those discussions?

A. As to the pricing of the—yes, I am sure they went on before.

Q. Let's focus on that. Now, do you recall Mr. Koessler said to you—in those discussions you were also talking to Mr. Koessler about the price that King was paying International, do you recall that?

A. We always talked about the price King was paying International.

Q. Do you recall that Mr. Koessler told you—this is very important—that Mr. Koessler told you that he had spoken to Nicht about this, and Nicht said that he—he assured him that he would not solicit the NEA accounts, do you recall that?

A. No, I do not.

Q. That's what I want to refresh your recollection about by your testimony before the Grand Jury.

A. Good, good. In my mind, when Mr. Walker was there at the Beverly we didn't know what Mr. Nicht would think about this. As a matter of fact, I think I testified that as he left he said something to the effect, "If I don't call you—" —he went out the door, he said, "If I don't call you back, maybe this will work" or something to that effect. We didn't know previously to the Beverly that Mr. Nicht was going to go along with any such arrangement. I think I can find it in the Grand Jury testimony—I think—if I didn't testify to that, I should have.

Q. Let's read the questions and answers from page 748 to page 752 and see if that refreshes your recollection:

2781 "What, if anything—"

A. What page?

Q. Page 748, line 2.

Mr. STEVENS: You are not going to stop and ask him?

Mr. BERNSTEIN: I will read continuously from page 748 to page 752, with the Court's permission.

Mr. MOORE: Why doesn't the witness read it? You are trying to refresh his recollection.

The COURT: If there is an objection to that reading, why don't you have him read his own testimony and ask him if it refreshes him. If he says no, you can say, "Doesn't this item refresh you in any way?"

By Mr. BERNSTEIN:

Q. Will you read, please, the transcript, page 748 to page 752 to yourself?

A. The whole transcript from page 748—

Q. To 752.

The COURT: Then in the light of what you said this morning you evaluate whether that leads you to some further understanding and recall, and if it does say what it leads you to, if it doesn't, say so.

The WITNESS: All right. I have to go back further.

Br. BERNSTEIN: Surely.

The WITNESS: "What, if anything, was said?" Was that what was said at Beverly, is that what the question is here?

By Mr. BERNSTEIN:

Q. I suggest, Mr. Anderson, you read from page 748 to 752 and then, if necessary, go back to 746 or whatever else you need. I think it will clear up as you go along.

A. (Witness examines transcript.)

Q. Will you please read up to 753, line 4?

A. (Witness examines transcript.)

Q. Then if you have done that, skip to 775—excuse me—

A. 775?

Q. No. 774, line 13.

A. The pages aren't marked very clearly. 774?

Q. Line 13.

A. (Witness examines transcript.)

2783 Q. All right? Now read 775 to yourself.

A. (Witness examines transcript.)

Q. Read 776, please?

A. (Witness examines transcript.)

Q. You have read 776, how about 777?

A. I haven't read that yet.

Q. Particularly line 7 and the answer at line 11.

A. (Witness examines transcript.)

Q. Now, does it refresh your recollection—I am trying to find out, does it refresh your recollection? The only way it can, Mr. Anderson, is if you think back to those days. You have to do that, that is difficult.

A. It is. I will try.

Q. Thinking back to that period of time; do you recall now that you did have discussions with Mr. Koessler before this meeting at the Hotel Beverly concerning Nicht's willingness not to solicit your accounts?

A. No, I don't recall. I recall a lot of talks with Mr. Koessler in connection with the sale of Buffalo Color Press. I recall, of course, complaining about the sharpshooting price cutting that was going on. I don't recall, I'm sorry, how it came about that Mr. Koessler was going to introduce us to Mr. Nicht.

Q. You don't recall?

A. I recall the purpose of the meeting was to see
2784 whether Nicht—whether we were going to stop this price cutting.

Q. It was clear after that meeting that you were going to do that, you left the meeting with that understanding?

A. I think, as I testified to the Grand Jury, that we thought we had something for a while. But—I think I said it to the Grand Jury—Mr. Nicht went out the door and he said, "We will see." Since he didn't come back, we assumed that maybe he was agreeing to it.

Q. Which part of your testimony are you referring to? Read the portion. Let's look at 776, line 22—excuse me—line 22, 775. Is that what you are referring to?

A. Yes, sir, that is what I refer to.

Q. What is it that you left the meeting with, what understanding?

A. Do you want me to read from what I said then?

Q. Is that an accurate statement of it?

Mr. STEVENS: I object.

The WITNESS: I said I didn't recall the exact words.

Mr. BERNSTEIN: Is that an accurate statement?

Mr. STEVENS: I object.

2785 The WITNESS: Let me see.

The COURT: I am frankly not following you, Mr. Bernstein. Did you want him to endorse what he said, as to a full answer?

Mr. BERNSTEIN: I want to ascertain whether the witness is now stating under oath on the stand what he testified to in the Grand Jury at that time is now his statement, the correct statement of the understanding that he left the meeting with

The COURT: Or if there is more?

Mr. BERNSTEIN: Or if there is more.

The WITNESS: Well, this particular answer that he is asking me about——

By Mr. BERNSTEIN:

Q. What was your answer?

A. You're on page 776, line 20?

Q. Take 775, line 22.

A. 775, line 22.

The COURT: I will tell you what I think our trouble 2786 is, Mr. Bernstein, I am listening carefully, you are hopping back and forth, you see. I think you should fix your mind on one part that you want to explore and let him focus on that, if you can, because, candidly, I know you are standing there thinking, but you have made numerous changes in what you are asking the man to read. I don't follow it and I think he is having trouble. Now, let's see if we can't get along.

The WITNESS: If my counsel has no objection, I will read my answer on page 776.

By Mr. BERNSTEIN:

Q. Read the question first so that we have the full thing.

A. "Any question about it or any qualification you would like to offer? I am talking about that meeting." Now, here we are talking about the Beverly meeting.

Q. Your answer—you were asked on 775——

A. I said yes. You asked me whether I wanted to qualify it and my answer is, "Yes. I would like to say it was a very short meeting and I can't recall the exact words that were 2787 used. But we—I don't know exactly what Nicht said—we had the feeling——" —that is Mr. Walker and I—"—we had the feeling that this would be trite, there was no length of time on it or anything like that."

Q. Then you were asked the question: "You left the meeting initially with the understanding that it would commence to operate immediately?", and you said, "That is right."

Mr. STEVENS: I object to that.

Mr. BERNSTEIN: Is that correct?

Mr. STEVENS: I object to that.

The WITNESS: Well—

The COURT: Just a moment, Mr. Anderson. I don't wonder you are, let us say, confused. You have an objection from your lawyer, we have to pass on it. What he is doing is either agreeing that is the answer he gave today, as he had before, or he has something more.

Mr. STEVENS: My objection is that, in fact, what Mr. Anderson has read is in answer to a question put to him in the Grand

Jury and is precisely what he testified today, and this
2788 reading of a question and answer and saying, "Did you say that?", is not refreshing his recollection on anything.

The COURT: It doesn't hurt. What Mr. Bernstein is really getting at, as I understand it, is that when you and Koessler were talking, prior to the Beverly thing, there was some understanding that he would see Nicht and get him pinned down that he would not try to clip your customers away from you. When you finally met Nicht in Beverly there was practically a code almost, "Okay?" "Okay.", and that was an endorsement of a large contract not to compete with each other for each other's clients.

Mr. BERNSTEIN: That is correct.

The WITNESS: If that is what Mr. Bernstein is trying to show, then that is not correct. When we went to the Beverly—not correct, your interpretation is not correct—

2789 when we went to Beverly, as far as I'm concerned and I believe as far as Mr. Walker is concerned, we didn't know we had an agreement with Nicht. But as my Grand Jury testimony shows, when we left we were not sure, we thought we did. If this was all cut and dried, like you are attempting to show, the agreement would have been had I would have said yes, but I didn't. If I could be more helpful I would.

By Mr. BERNSTEIN:

Q. Your statement now is pretty positive—

A. I have lived with this thing for seven years, I have tried to cast my mind back. The only thing that comes to my mind was the thing that Mr. Koessler brought up at this trial, that there was another man in the room, which I do recall as being correct. I think he was a friend of Mr. Walker's. Try as I can, I have no recollection, I can't establish who the man was.

Q. Okay, that is understandable, we all have that
2790 trouble. I am trying to ascertain, so that there is no doubt in the Court's mind as to what occurred, as to

whether or not when you testified before the Grand Jury you were telling the truth then, there is no doubt that you were telling the truth under oath when you testified before the Grand Jury?

A. No doubt in my mind. I think you are mixing up Beverly with some earlier meetings. There was no doubt I tried to tell the truth.

Mr. BERNSTEIN: I submit, your Honor, the only way to prevent the mixup is to permit me to read the questions and his answers to see whether I am mixing up the two. I submit that on page 750——

Mr. STEVENS: His question should be, "Is there anything on page 750 of the transcript of the Grand Jury which refreshes your recollection as to whether or not there was, in fact, an agreement substantially concluded before the Beverly meeting."

By Mr. BERNSTEIN:

Q. I am asking you this question, Mr. Anderson——

2791 The COURT: Wait a minute. Now, I appreciate—I think you are right, that is the proper procedure, but in the nature of things, gentlemen, if we are ever going to finish we may have to change the rules a little. I am not a jury here, I trust I am not one who is regarded as having been born yesterday. Let me hear it, and you can argue with me about the propriety of it and the probitive force of it, and you can be sure I will listen carefully. But we will never get ahead if we don't stop the exchange here. All right.

The WITNESS: The questions on page 750 have nothing to do with Beverly. They don't refresh my memory about anything that went on at Beverly.

By Mr. BERNSTEIN:

Q. All right. On page 749, line 2, you were asked this question.

2792 "Q. When did these discussions take place in regard to not infringing upon King's territory and they not infringing upon NEA?"

A. That was probably late in 1955 or very early in 1956." Now on page 750:

"Q. Where did such discussion take place?"

A. Here in Buffalo.

Q. Where in Buffalo?

A. At the Statler.

Q. Where was the first meeting in that connection?

A. This I don't recall. There were a lot of business we talked about. I don't recall when the problem was brought up in a formal meeting.

Q. You do recall there was a formal meeting devoted to that problem?

A. There wasn't a formal meeting devoted to this problem. All of the problems were on the floor. This was one of the important problems.

Q. These meetings were held at the Statler?

A. We met at the Statler and I think we were out at Greater Buffalo Press.

Q. Going back now, and trying to recall those meetings whereby you say an agreement was reached——

A. It might have been done on the phone.

Q. Referring to the meetings; who can you recall was 2793 present at such meetings?

A. Well, it would be Walter Koessler and myself. I am sure Herbert Walker had a part in this, I don't know.

Q. Are you sure he knew about the actual agreement being made?

A. Yes, sir.

Q. Anyone else that you can think of, was Mr. Borglund there?

A. No, from our company would be only myself and Mr. Walker.

Q. Now, did you want some assurance from Koessler that King in turn would not come in and seek your established accounts?

A. Yes. Primarily, at first, at lower price than we could print for.

Q. Did you get any assurance from Koessler in that regard?

A. Finally it developed, we were told that in buying this plant that he had also taken over a contract that International Color Printing had with King Features that extended, we understood, for about five years, and set the basis on which sections would be priced for King.

Q. But, at any rate, did you attempt to solicit an agreement from Koessler that he would prevail upon King in turn 2794 not to come in and take your accounts, whether it be on the lower price level or any other service?

A. Yes, we did. Now, which way the soliciting went, this was a mutual thing, I wouldn't like to say that NEA did soliciting

any more than Buffalo Press did, I think it was a mutual problem.

Q. At any rate, did there come a time that Koessler assured you people that King would not solicit your established accounts?

A. Yes, they did.

Q. In giving you that assurance did he tell you people that he had spoken to people over at King in that regard?

A. Yes, he did.

Q. Do you recall whom he said he spoke with at King before you were given the assurance?

A. Mr. Nicht.

Q. Do you recall when he said that? Can you recall the particular meeting?

A. No, I can't.

Q. That would be in the period of late 1955 or early 1956?

A. That is right, no later.

2795 Q. Are you sure it was in that period?

A. I am sure it was in that period, it was no later than that period."

The next questions go on to the sale of Buffalo Color Press and the price, and those questions continue on another subject until we come—

Mr. STEVENS: Do you have a question for the witness?

Mr. BERNSTEIN: Yes.

By Mr. BERNSTEIN:

Q. My question is; are any of these answers that you made under oath—were they true at the time you made them?

A. They are true in the context which I gave them. These meetings held at the Statler, and so on, which Mr. Borglund did not participate in, and so on, those were concerned with the sale of Buffalo Color Press to Greater Buffalo and the problems attendant thereon. Certainly one of the problems that came up was the pricing structure we had as compared to the pricing structure—you are trying to show all the time we were talking about the Beverly truce and it is not true.

Q. No, no, I am trying to show these conversations were before the Beverly truce meeting. All of the questions—

A. Yes, they were.

Q. Is that correct?

A. All of the—they were not devoted to the Beverly truce.

Q. They were before the Beverly truce meeting?

A. We had discussion about pricing after the Beverly truce, they have continued to this time.

The COURT: What he is trying to say, in the parlance of the street, is that before Beverly you had a deal worked out wherein King and you would not try to exploit each other's customers, that they then came Beverly—

The WITNESS: I understand.

The COURT: That is what he wants you to say, when you testified about the Statler with Koessler, that that resulted in your understanding of a deal.

The WITNESS: Statler meetings were not involved with Beverly, they were involved with the selling of Buffalo Color Press. I did testify we had an agreement with Nicht before we went down. This is certainly not my present recollection.

By Mr. BERNSTEIN:

Q. At the time that you said that you believed it was true, at the time that you said that?

A. Anything that I said in here, given the proper interpretation, was certainly the truth. I was trying to be helpful to the Court, I was testifying to the truth. Maybe you led me on, I was trying to do my best.

Q. Now, inviting your attention to—I represent that between page 752 and 775 there is no more discussion on the same subject or the Beverly Hotel meeting—

A. I don't know, I haven't looked.

Q. I represent that. I will state under oath that is the case and if we took the time to read it we would see that. On page 774 you were asked this question:

Q. After the actual sale was consummated, do you recall meeting with Nicht in New York City?—Now we are not talking about the Statler or Buffalo, or anything else, we are talking about New York, and you say:

2798 "A. Yes, sir.

"Q. At some hotel?

"A. Yes, I do.

"A. Where did that take place?

"Q. At the Beverly Hotel.

"A. Who called that meeting?

be a That I don't know. I think it was mutual there would be a meeting.

"Q. Who was present at the meeting?

"A. There was myself, Mr. Walker, Walter Koessler and Mr. Nicht.

"Q. Did that meeting take place in the latter part of 1955?

"A. I had been trying to recall, I'm not sure whether it was the latter part of 1955 or the early part of 1956.

"Q. Whose suite was it in at the Hotel Beverly?

"A. NEA service.

Q. That would be Mr. Walker's suite, or did it belong to the service?

"A. At that time it was—I'm not sure whether it was his suite or NEA had a suite. At one time he had a suite at the Beverly."

Mr. MOORE: If the Court please, this is just what has been testified to. Why are we being treated to a reading?

2799 The COURT: I am trying to understand. I thought in the nature of things Mr. Anderson had said everything that he had said in the Grand Jury. Now, you think there is some departure and you are trying to bring it out. Go ahead.

By Mr. BERNSTEIN:

Q. "Q. What was the purpose of that meeting?

"A. The purpose of the meeting was to agree that NEA Service would not take runs currently printed by King Features Service and that King Features Service would not take runs currently printed by NEA Service.

"Q. Did you leave that meeting knowing or thinking that thereafter King would not solicit accounts serviced by NEA?

"A. Yes, I thought that would be the agreement. I didn't know if it would work. Yes, I thought that would be the agreement.

"Q. Did Nicht, during the course of that meeting, indicate a willingness to go along with that idea?

"A. We thought so, yes.

"Q. In other words, he so indicated to the group there?

"A. We thought so, yes.

2800 "Q. Mr. Walker and you, on behalf of NEA, told him or indicated to him that you would not solicit accounts he then had?

"A. That is right.

"Q. Would you say that this was the oral understanding or agreement you came to at that meeting?

"A. Yes.

"Q. Any question about it or is there any qualification you would like to offer?"

I am talking about that meeting, and your answer was:

"A. Yes, I would like to say it was a very short meeting. I can't recall the exact words that were used. We were—I don't know exactly what Nicht said. We had the feeling this would be tried. There was no length of time or anything like that.

"Q. You left the meeting initially with the understanding that it would commence to operate immediately?

"A. That is right.

"Q. Did Mr. Koessler, during the course of that meeting, urge this agreement to be accepted by both sides, did he indicate he was in favor of it?

"A. Yes, he did.

"Q. Did Mr. Nicht have to be coaxed into giving his assent to such agreement?

2801 "A. No, I don't think he was coaxed.

"Q. Did he want such assurance from you people?

"A. That was the basis of it, yes.

"Q. Did he indicate that he was anxious to get such assurance from you people?

"A. I don't remember the exact words, I think that was the idea.

"Q. Generally?

"A. Yes.

"Q. No question in your mind that such an understanding was agreed upon at that time?

"A. That is right, there is no question."

Now, Mr. Anderson, my question to you now is; were the answers you made under oath at that time the truth?

Mr. STEVENS: I object to that.

The COURT: Overruled. He said they were the truth. You also said in the context that you were reciting they are the truth, is that correct?

The WITNESS: These are the right answers. I don't agree with the implication Mr. Bernstein may want to put on some of them.

2802 Mr. MOORE: Now, just a minute, I am going to object.

The WITNESS: I would further qualify it—

Mr. MOORE: Please. I am objecting to the receipt—evidently this is some way he puts things in evidence, a new technique unknown to the common law so far—if this is going in evidence.

I am going to object to the receipt in evidence of statements, if they are going in, of somebody testifying about what somebody indicated. I mean, this is conclusive.

The COURT: I understand that. It occurred to me, as recited there, that Mr. Koessler's words are not attempted to be quoted, that "Did Koessler go along with this or did he solicit it?" "Yes." That would not be competent evidence and I do not receive it as such. I appreciate that this gentleman was in the Grand Jury without counsel. In fact, I noticed another thing, he said
2803 it in there, "Thereby he, Koessler, acquired two key sales organizations", which you meant was NEA and King. I never had the concept that Koessler ever captured either one of those outfits that day. He said that is true. Mr. Moore, I am listening to this, I am accepting in the vein as a lawyer would, of what is being recited. Ultimately I am not interested in what has been said here, this is not technical, legal proof, except to confound a witness or to refresh his recollection. This gentleman has persisted that the truth lies in those statements that he made under oath then, that under the circumstances as they then existed they did not mean what Mr. Bernstein would like them to mean. We will have to get along sometime. I understand about how you feel about it, if I were sitting here taking these conclusions as facts, I don't wonder you get
2804 upset about it, but I am not. I don't know today what Koessler said in that room beyond, 'This is Nicht and this is Anderson, gentlemen, shake hands.' That is all I know, or something like that.

By Mr. BERNSTEIN:

Q. I am trying to ascertain, Mr. Anderson, whether or not it is—do you categorically state under oath that you have a clear recollection of the events and you clearly deny that prior to the Beverly meeting Mr. Koessler told you that he spoke with Nicht and Nicht gave him the assurance that he would not take away NEA's accounts?

A. I certainly do not testify that I have a clear recollection of what went on back in 1956. That is eleven years ago, half of my working life. I don't testify that I have a clear recollection. I do testify that I am trying to recall to the best of my ability.

Q. Attempting to recollect to the best of your ability, you recollect that you were at a meeting with Mr. Koessler concerning the sale of Buffalo Color Press in the Statler

Hotel, is that correct, do you recall that? Do you have a present recollection?

2805 A. We had a meeting at the Statler Hotel early in the summer of 1955 to talk about—we discussed the sale of Buffalo Color Press to Greater Buffalo. All the details—not all the details were worked out on this session. This was a previous discussion which led up to the meeting where we got down to cases on the sale.

Q. My question is; do you now recollect whether at that meeting in the Statler you discussed with Mr. Koessler the price that King was getting from International?

A. No, I don't recall. But in the natural course of events, when we got together with our supplier, this would come up.

Q. You don't have a present recollection of that?

A. No. As a matter of fact, I was wrong in this when I said that Mr. Herman was at this meeting, Leon Herman. I left him out in the earlier testimony. He is now dead.

Q. Now, after the meeting at the Hotel Statler, was there another meeting with Mr. Koessler at the Hotel Statler before all of the details of the Buffalo Color Press transaction were resolved?

A. This is what I don't recall. We had meetings over at Greater Buffalo Press. I don't recall any additional meetings at the Statler. There may have been. I don't see, with a
2806 quick perusal of the Grand Jury testimony—maybe it's here, I don't see it.

Q. What?

A. We had meetings, no question about it, but where they were I don't recall.

Q. Do you recall the meeting at which the final details about the sale and the price that Greater Buffalo was to charge NEA, all of those details, where that was held?

A. No, I don't recall. This was a developing negotiation on the sale of the assets of Buffalo Color Press. We had to arrive at a mutually satisfactory sales price. I don't recall, but I would think sometime in early summer in the meetings we were coming down to the nub of what we thought we should have if we sold Buffalo Color Press.

Q. Well, where were the discussions taking place?

A. Some were on the phone, some were—as I say, one of them at least was at the Statler; we had a meeting, I know, at Greater Buffalo Press.

Q. Now, is it your present recollection that during the course of negotiations, and before the sale actually took place, you were talking to Mr. Koessler about the price that King was paying International?

A. Before the sale actually took place on October 23rd, 2807 yes, because on August 1st we learned—or August 2nd, in that area—we learned that Koessler had bought International Color Printing and, of course, we—as soon as we could get together with him, we asked him that question. The pricing came up, naturally.

Q. What did he tell you?

A. I don't know whether it was early, but somewhere along the line we got the definite impression—I would assume he told us or somebody told us—that they had inherited the contract that International, had with King Features. Now——

Q. What was the——

A. We had the impression this was a short-term contract. I don't know, long-term or short-term.

Q. Did that mean to you at that time that he was saying he could not raise King's price?

Mr. MOORE: I object to what it meant to him.

The COURT: Sustained. Mr. Anderson, you can understand that would be a conclusion. Now, there was some talk that he had been pinned by a contract formerly made that he had to honor?

The WITNESS: That is right.

The COURT: And he told you that he was going to have to honor it?

2808 The WITNESS: Yes. We didn't know the details of the contract that King had with International. As I said, we knew the basic formula. We didn't know—I didn't know, at least, until it came out in court or until the papers went in what the contract actually is or was.

By Mr. BERNSTEIN:

Q. Did Mr. Koessler tell you at that time that he could not give you a lower price to meet King's price, to meet International's price to King?

A. Mr. Koessler told us that he had inherited this contract. When he bought International he had inherited the King contract. He also defended the case, that actually overall his printing prices in Greater Buffalo were lower, we don't quarrel with that, we quarrel with the way prices were arrived at so that our

smaller runs left us at a disadvantage with King. This was our concern, was King going to have now the know-how of Greater Buffalo transferred down to the International plant. We hoped all along the line that International was in trouble.

Q. Do you now recollect while these discussions were going on, and this was between August of 1955 and October of 1955 when you finally agreed on the price that you would pay Greater Buffalo, is that correct?

A. Well, I am sure—I am sure that the price that—would you restate the question?

Q. Yes. During what period of time, from August to October of 1955, was the price that NEA was going to pay Greater Buffalo for printing—when was that arrived at?

A. That I don't know. I know it was arrived at certainly before October 23rd, because all these papers had been handled by the lawyers, and so forth. I don't know when between early summer and October 23rd, when we finally got what we wanted from Koessler.

Q. It is fair to say, is it correct to say, that you accepted Greater Buffalo's price knowing that International was charging King a lower price on shorter runs because Mr. Koessler inherited that contract?

A. No.

Q. Why not?

A. Our price at Greater Buffalo—the price NEA paid for printing at Greater Buffalo Press was based upon the price structure that Greater Buffalo Press offered every other newspaper in the country. They had one set of prices, and we started from that. Understand, Mr. Bernstein, we had runs in Greater Buffalo prior to the sale. We were already—they were already our contractors for printing. We paid exactly the same price for printing that we had paid previously for runs in the plant. Then the question is; what payment will Greater Buffalo Press make to us for buying this going business, and this—so there was no discussion. I hate to belabor it, there was no discussion about the pricing structure, the only discussion was about the payment Greater Buffalo would make for the plant, and how we could handle the return of capital and—

Q. Which payment are you talking about? Are you talking about the \$25,000 for the machinery and the inventory or are

you talking about the price that NEA would receive for each one of the scheduled newspapers or both?

A. We were talking about both of them, sure.

Q. Nowhere in this discussion was there any talk about the price that Greater Buffalo was going to charge NEA for printing for the newspapers, that was understood, correct, to continue the price that Greater Buffalo had been charging NEA before?

A. Yes, Greater Buffalo's basic price structure stood.

Q. And that price was the price that it charged to
2811 newspapers when it sold newspapers direct, is that correct?

A. Correct.

Q. Was there any—did Greater Buffalo have an distinction—

A. Except here again, I probably should qualify, we were putting together makeready, readyprinted color comic supplements, and we had the advantage over separate newspapers, spreading these makeready costs over a great many newspapers, lowering the cost to the newspapers and being able to call for a lower price to the smaller newspapers.

Q. Was his makeready price to NEA any different than the makeready price to another newspaper?

A. No, the price was the same, except that once we bought this makeready, we, as sales agents, could go out and sell that makeready to other newspapers along the line.

Q. Was that price the same that Greater Buffalo charged other syndicates?

A. I assume so. I don't know so.

Q. Now, what were you attempting to do during the course of those negotiations in mentioning to Koessler the more favorable price that King was getting at International'?

2812 Mr. MOORE: I don't like to interrupt, but may I have a continuing objection to the conclusory nature of these questions, what he was attempting to do.

The COURT: You understood International was printing things for King at a lesser rate than you could get in Buffalo?

The WITNESS: For the smaller papers, we understood that.

The COURT: You were upset and you were talking to Koessler about it?

The WITNESS: Yes.

The COURT: Will you tell us what you told him or asked him, or whatever?

The WITNESS: We had no proposal on the printing of the sections, except to make it as easy as possible for us to build these makereadys. I have no quarrel with the basic way they approached the price. The basic way International approached the pricing was wrong and led to the distress of International and their finally having to do something about it.

2813 By Mr. BERNSTEIN:

Q. Did you say anything to Mr. Koessler in an effort to get him to change the International pricing structure to King?

A. You mean after he bought——

Q. Between August and October of 1955?

A. No, we didn't. We tried to—I'm not sure—we did urge him when the sections went into Sylacauga and Lufkin that we be on the same basis, that the prices would be on the same basis between King and NEA, and that the pricing structure that was in International not be carried over unless he was going to do it for everybody.

Q. Let's see if I understand you. Between August and October of 1955 were you trying to urge Mr. Koessler to give NEA, at Sylacauga and Lufkin, the same price that he was giving King, is that correct?

A. No. Between August and October, I don't know. We knew——

Q. I am limiting the discussion to that period.

A. Whenever that point was that they were going to build and the provisions of the contract became effective, that
2814 we could be in those plants if we wanted to, and we wanted this basically to apply to everybody.

Q. I am trying to get your present recollection of your discussion with Mr. Koessler between August and October of 1955, and those before you crossed every t and dotted every i on the contract, while you were negotiating with him. You testified there was some discussion about the price that International was charging King. Now, I am trying to ascertain what the discussions were that you had with Mr. Koessler concerning International's pricing to King?

A. I will try to make it clear what they were. I don't know what more I could add to it.

Q. Here is what is confusing——

A. We were selling a plant, there was a lot of things we would talk about. The one thing we did was to try to get as much for Buffalo Color Press as a going concern, the good will and the customers in there, as we could. This was one part of the negotiation, the sale of the plant. As to the pricing that existed between International and King prior to August 1st, when we knew that sale had been made of International, we talked about pricing, about the whole market. We complained, we always complained that we ought to have the pricing cheaper.

2815 We didn't ask him to change the basic structure. In the sale we agreed his pricing structure for the newspapers was certainly low, we could live with this. What is the question?

Q. That is what confuses me. You did not ask him to change the price, you expected him to change the price, you were telling him that King was able to buy cheaper than you on small runs. What were you saying to him about it? Was it just an academic discussion, "They can buy cheaper, I want you to meet the price or increase their price", what were you telling him to do?

A. We were—he told us that he had inherited this contract, right?

Q. Yes.

A. He had to live with it.

Q. And how did the discussion come up if you were not seeking a decrease in your price and if you were not seeking to have him increase International's price? What were you discussing, what were you telling him?

A. We were constantly discussing about what the value of Buffalo Color Press was, what we had, the payments that he was going to make, how they would be made. This was
2816 a return of capital of many of these accounts. This was—

Q. Did you also say to him at that time—please try and recall, I know you want to cooperate, you are under oath and you want to tell the truth, it takes a little effort to recall these events—to the best of your recollection, did you have any discussions with him at that time or complaints that King was adding King Features in runs that NEA had and substituting King runs for NEA features, did you have any such discussion with him?

A. Yes, we talked it over. I am not going to repeat your exact words or accept your exact words.

Q. Say it your way?

A. We complained about King. This had been going on for years. We complained we wanted them in our camp, we wanted them to understand our problems, we complained for years that if King had a readyprint color comic section made up of King comics that we found it very difficult to sell NEA comics, the rights to NEA comics to that paper because they were told by King that the page change charges were too high to allow the change in this readyprint section, this King section, to accommodate NEA comics. We said, "How could they be, we understand that Wilkes-Barre, International, isn't charging King anything for page changes." We complained about that, yes.

2817 Q. You complained to Mr. Koessler?

A. Sure we complained, yes. I would complain to anybody about it, I would complain to you about it.

Q. This is the most important thing—

A. All right.

Q.—do you recall whether you asked Koessler to do something about it between August and October of 1955?

A. Between August and October of 1955?

Q. About that problem?

A. I think—whether we asked him to do something about it, talk to King about it, this would be a good question, I don't know. We probably said King ought to stop it.

Q. Now, what I am asking you to recall is that the climate was such and your discussions with Koessler were such that he knew you were complaining about this practice of King's, is that correct?

A. Yes, I think he had known about it for ten years.

Q. This is the important thing that I have been asking you to recall; whether you asked Mr. Koessler to speak to Nicht about that or whether Mr. Koessler told you, volunteered to you that he had spoken to Nicht about it, or whether it was a mutual thing, you both knew it, you both wanted it to stop, and that he did tell you that he spoke to Nicht about it, that is the important thing.

2818 A. He may have told Mr. Walker. He may have said that. We didn't know he was seeing Nicht up until August 1st. We didn't know he was seeing Nicht.

Q. After August 1st you knew that?

A. Yes, we did.

Q. Now, the question is; did anything that Mr. Walker said to you during that period lead you to believe then, between August 1st and October 1955, that Mr. Koessler was talking to Mr. Nicht about it?

A. I think Mr. Koessler may have said, 'I will talk to him.' I don't know whether he did, he may have, I don't know.

Mr. MOORE: Again, I don't want to interrupt, but I want to reserve my rights on the motion to strike.

The COURT: I understand. Mr. Anderson is giving generalities, and that is not binding on you in any fashion, that kind of proof. You see, Mr. Anderson, that is just your surmise of whether Koessler might have. I think you are going further than you need.

The WITNESS: I am trying to be helpful to the Court. 2819 I may be going further than I should.

By Mr. BERNSTEIN:

Q. I appreciate that, Mr. Anderson, and I am trying to ascertain whether you are able to state under oath that you presently recollect some conversation with Mr. Koessler between August 1, 1955 and October 1955, before the Beverly meeting, that he had told you that Nicht was not going to take NEA accounts away from them?

A. Not what?

Q. Nicht was not going to take any NEA accounts away?

A. Between August and October you are saying?

Q. Right.

A. No, I don't think so. He may have said, 'I will talk to Nicht' but——

Q. Now, let's think back to prior to the Beverly meeting; at that time did your complaints to Mr. Koessler increase in volume now that you knew he had Buffalo Color Press, he had International, did your complaints increase in volume that King was putting King Features in NEA accounts?

A. Back in 1955?

Q. Back in 1955.

2820 A. Before we sold, after we knew——

Q. After the deal?

A. Mr. Bernstein, I don't know. As I say, it was a continual complaint, we were trying to sell the comic sections, we complained to everybody.

Q. Now, let's get to the Beverly Hotel meeting and try and refresh your recollection. Now, I know that is difficult. Do you

have a present recollection of whether you went to New York City specifically for that purpose or were you there for some other purpose?

A. I don't recall that. I have been trying to. I don't know, I don't recall whether I stayed at the Beverly on that occasion. Sometimes I did, sometimes I did not.

Q. You don't recall anything as to the events that immediately preceded that meeting, how it came about?

A. The events immediately preceding the meeting?

Q. The conversations with Mr. Koessler about it, or the conversations with Mr. Walker about it, how you happened—

A. Well, I recall we were going down there to meet Nicht, he was going to be introduced to us by Koessler.

Q. Do you recall that you were going down there to get confirmation that King was not going to take NEA accounts?

A. No we were going down to get that agreement.
2821 Certainly, as I said before, this was not cut and dried before. As I testified, when I left I was not sure we had it. This was not a thing that had gone on, planned, and we were going to meet and shake hands, no. This was a meeting with Mr. Nicht.

Q. Do you recall whether or not prior to that meeting and after October 1955 that you had told Mr. Koessler that if King wouldn't take NEA's accounts, NEA wouldn't take King's accounts?

A. I don't recall specifically. I imagine we were looking for breathing space there and we might have indicated that, yes. We were—we were—yes, we would welcome breathing space, time to see where we were going in the printing business. We lost a publishing company in 1954, Merrick Printing Company. We had been to World Color and made our best efforts and they said no, they were going into the comic book business. We were still looking for printers and trying to find out where we were going. We were off base by the purchase of International. I think we probably told Koessler, 'If you can get us some time, we would buy it.'

Q. What does that mean, would you please elaborate?

A. Yes. We would be—our color comic supplement business was under strong fire from King. We were being
2822 shot at, losing sections, we seemed to be underpriced here. I wanted—we wanted time, since we had sold Buffalo Color Press, no arrow in our bow, but we wanted time to

see where we were going in this color printing business, and we were willing for a truce. It was a mistake, a foolish mistake, but we were willing.

Q. By "truce" you mean you were willing to refrain from soliciting King's accounts, is that correct?

A. That is right.

Q. In exchange for their willingness not to solicit NEA's accounts?

A. That is right.

Q. And is it the truth that you communicated this wish or attitude to Mr. Koessler?

Mr. MOORE: He asked him that question four times and he said he may have, he might have, he doesn't remember.

The COURT: Give your statements to Mr. Koessler, as best you recall them.

The WITNESS: I don't recall. Mr. Koessler said he would introduce Nicht to us. I am sure we——

The COURT: In other words, you say I think that he
2823 was aware of your critical problem and he said, to the best of your recollection, 'I will put you in touch with Nicht'?

The WITNESS: That is right. I go further and say that before he said that we indicated we would have a short truce.

The COURT: With Nicht?

The WITNESS: With Nicht, yes, sir.

By Mr. BERNSTEIN:

Q. You told that to Koessler, you told that to Koessler?

A. I don't know. Yes, I communicated with Mr. Koessler, yes, I agree. I don't know—this must have been it, I don't think we would have gone to see Nicht unless we thought there was some—he might agree to something.

The COURT: The fact is Koessler never purported to act for Nicht? He never said you are in or out, he said, 'I will put you in touch with Nicht'?

The WITNESS: No, as far as we knew Koessler couldn't speak for Nicht.

The COURT: We will take a short recess.

2824 (Thereupon the Court was in recess at 3:00 P.M.)

(Proceedings resumed, pursuant to recess, commencing at 3:30 P.M.)

By Mr. BERNSTEIN:

Q. Now, Mr. Anderson, inviting your attention to the period that wiately following the Beverly meeting; is it correct to say part of when you left the meeting NEA intended to adhere to its

A. The agreement, is that correct?

Q. And to it if King did.

body Did you make this fact known to your salesmen or any-

A. Else?

Q. Yes, we made it known to our sales manager.

A. Who is he?

didn't William Borglund. An individual situation came up, we some —we let the salesmen—told the salesmen to back off in meetings. We didn't give them the details of any Beverly

Q. ing.

this? You did not disseminate a salesmen's bulletin telling them

2825 A. No.

Q. You did not have a sales meeting, calling the sales-

A. men in, telling them as a group?

Q. No.

from Had you been in the practice of having sales meetings instrume to time, bringing the salesmen in and giving them

A. ctions?

meet We operate on an informal basis in that we do have sales Newsngs sometimes at a meeting of the salesmen at the Annual call for paper Publishers Meeting, they would be in, we would

Q. or a sales meeting there.

semin I am trying to ascertain the full extent to which you dis-

A. ated knowledge of this Beverly—

to Bill believe the full extent to which we disseminated it was was Bill Borglund and probably to Jack Gamble. Bill Borglund Jack director and vice-president and manager of sales, and

Q. Gamble was sales manager, sales director.

stand And no one else immediately after that, but did I under- to as you to say that as a situation arose you would tell that

A. salesman?

to him We would not describe the details of the Beverly meeting seem but we would tell him to lay off. I suppose we—this

ed to get out, not as a formal bulletin, this sort of thing, but 2826 enough people knew it, it was general knowledge.

Q. Take P-36 in evidence, for example, Mr. White-head's sales report dated January 19, 1956. Mr. White-

head says—I am inviting your attention to the fifth paragraph down—Mr. Whitehead says, “Since that time I have discussed this with W. H. B. and Earl Anderson, who state that under our new arrangement with G. B. P. we will not attempt to take any current contracts away from K.F.S.—”, and there is some other language in there. Is that typical of the kind of instructions that you would give a salesman when the occasion arose?

A. No, it is more an indication of how informally that was passed on, because Mr. Whitehead was—he was assuming things when he wrote here. He did not have any direct word from us as to what we were doing.

Q. Did he have any word from you?

A. I told him to lay off, told him not to make—to make a competitive—try to make a competitive quotation here to the General Advertising Service, Incorporated. I knew he could not get the business anyhow.

Q. You told him not to—

A. He could not make a competitive quotation, he was not able to, I was not able to.

Q. Did you tell him that you had an arrangement with Greater Buffalo that you would not attempt to take 2827 any current contracts away?

A. No.

Q. Did you tell him that at any time before or at any time thereafter?

A. No.

Q. You never told him that?

A. No.

Q. Do you recall telling any salesman, other than Gamble or Borglund, not to make any competitive quotations?

A. Yes.

Q. Who?

A. There were other salesmen. I don't know that I can specifically name them. The same situation came up here where we couldn't get—couldn't hope to get the business, and I told them not to make a competitive quotation.

Q. Now, do you recall ever telling a salesman not to make a—strike that out. Were you in frequent direct communication with the salesmen or would your instructions be passed on through Mr. Borglund?

A. This was—this would vary. In early 1956 I was still in Buffalo, commuting back and forth between Buffalo and Cleve-

land, and these would be all through Mr. Borglund or Mr. Gamble.

Q. When you were in Cleveland did you have direct contact with the salesmen or did it go through someone else?

A. I might have direct contact with them but in many cases it would be handled by Mr. Borglund or Mr. Gamble, they were the sales directors.

Q. Do you recall any situation where you told the salesmen—let's take immediately after the Beverly meeting—not to solicit an account where you could have gotten the account?

A. I don't recall. I don't recall any exact instance.

Q. Do you recall there were instances?

A. I don't recall there were instances of this.

Q. You received a copy of P-36, Mr. Whitehead's report, did you take any steps to tell Mr. Whitehead that you did not have an arrangement with Greater Buffalo that you would not attempt to take current accounts away from King?

A. No, I did not.

Q. On P-38 in evidence—

A. I will qualify that, I say I did not correct him in writing, I would doubt that I corrected him on it.

Q. In March of 1957, P-38, again Mr. Whitehead says, in a report that you got a copy of, the last paragraph: "Since we are in agreement with King Features Syndicate not to take each other's present printing contracts, I explained to Robinson—", et cetera.

2829 A. Yes.

Q. So that did you take any action then to correct Mr. Whitehead's impression?

A. No, I did not.

Q. Then in P-39 Mr. Walker refers to Mr. Whitehead's report about the Jackson, Mississippi State Times, and then he says in the last paragraph: "It's all right to be high in cases like this, but I don't believe I would put the figure up as high as you did in this case. More like \$1.00 to \$1.50, I would say. Some suspicions might be aroused on the higher quotations." Did you get a copy of that?

A. I don't see that I was marked for a copy. I recall having seen it, yes.

Q. Did you have any discussion with Mr. Walker about that method of making your quotation in those situations where

you determined not to be competitive not too high so that the newspapers would not be suspicious and think it wasn't a genuine bid?

A. No, I have no recollection of having talked to Mr. Walker about this case.

Q. Did you do anything with respect to that at the time?

A. This was about the time that we decided this was not for us, the Beverly agreement, and we—this sort of thing is what we didn't like.

2830 Q. In May of 1958 you sent that bulletin to the salesmen—that was October 29, 1958. I am referring to N-1, you sent the memorandum to the salesmen calling their attention to the fact that some of them had the notion that NEA doesn't want them to solicit readyprint business, you were telling them that this was not the case?

A. That is right.

Q. That is the first time you did it, October 1958?

A. We had told many individually before this.

Q. You say "we," do you mean you, Earl Anderson?

A. We had—I, Earl Anderson, Jack Gamble, Bill Borglund—I don't know about Walker—had told them that this was all, we were not doing it any more.

Q. Then what was the occasion for the memo to all salesmen?

A. The occasion of the memo was the sending out of the routine office thing.

Q. And would you tell us what the circumstances were that led you to decide the Beverly agreement was not going to be honored any longer?

A. Yes, sir. We decided that it was foolish to have gone into it in the first place. In addition to that, it just hadn't worked.

We had seen no evidence that we were helping our situation. We were starting to get our printing arrangements squared around where we were ready to go full blast and slug it out.

Q. Can you fix a date of when that happened?

A. No. The last date I can come up with is Jackson. Jackson is the last instance I can think of or recall where we ever adhered to the so-called Beverly truce. I think that was in 1957.

Q. Now, inviting your attention to N-7. Do you have any knowledge of this transaction outside of what is contained in the document? Do you have a personal recollection of this transaction other than what you see from the document?

A. No. My recollection is that we were trying to sell the section.

Q. You have no recollection of this transaction with the Lima News other than what is contained in the document; that is my question. The only knowledge that you have—strike it out—

A. No. I read the report.

Q. Right. This morning you testified about the Lima, Ohio News, and I am trying to ascertain whether it is a fact that all your information about this transaction, the Lima News, comes from this sales report, N-7, is that correct?

A. As general information going on. This is the 2832 information in here that applies to Lima News. I don't recall of anybody specifically quoting any other prices, any other—I don't know quite what you want me to recall. I would like to try.

Q. I am trying to ascertain this. You testified this morning and characterized N-7, the transaction of the Lima News. What you were doing was reading the report and then giving your summary of what you had read in N-7, is that correct?

A. Yes, Basically, that is right. I recall I went back and got the report.

Q. You were not testifying about your present recollection of this transaction; you were summarizing what appears in N-7, is that correct?

A. I suppose the two melt together, I can't give a specific answer to that.

Mr. STEVENS: Now, your Honor, if I may comment; I do not understand that last inquiry. Mr. Bernstein was eager to say that he had no objection to this exhibit going in evidence.

Mr. BERNSTEIN: That is the whole point. I was trying to save time this morning. My objection to the line of 2833 questioning should have been the best evidence rule, the document speaks for itself. I permitted the witness to summarize it so that the Court will get the benefit of where we are going and what the testimony is. Now it is clear on cross-examination that the witness was doing nothing more than stating what appears in the document, and the document speaks for itself.

The WITNESS: It is an office record. Excuse me.

The COURT: I think what you are trying to say is that that is a fair summary of the events about Lima, but that you did

have information, apparently from talking to your salespeople, about that general concern over this.

The WITNESS: That is right. We have seven salesmen who write on the average of 200 reports, and we are all trying to sell readyprint color comic supplements wherever we can. For me to tell you that I have an exact memory of this situation is not right.

2834 By Mr. BERNSTEIN:

Q. You don't?

A. No, but I remember what was going on.

The COURT: As the sales manager you've got to keep posted on what is going on?

The WITNESS: Certainly. In 1956 I was posted on what was going on, but this is eleven years ago, and—if I can speed it along at any time, if you would tell me what you are driving at—this is an office record of what went on. I went back to this, found it, and refreshed my memory about Lima, Ohio. I know from my knowledge and experience in the field that we had tried hard to get this Lima News run.

By Mr. BERNSTEIN:

Q. Who was this—

A. This is out of our report.

Q. —salesman, H. R. H.?

A. Hal Hanson.

Q. Did you tell Hal Hanson after the Beverly meeting about the Beverly truce?

2835 A. As I said before, we didn't tell the salesmen about the Beverly truce. We told them in specific instances, this is not one.

Q. On March 21, 1956, when Hanson was going after the Lima News, he knew nothing about your Beverly truce arrangement, is that correct?

A. He didn't know the details of the Beverly truce. Whether another instance existed where we had told him that we could not make a quotation, a competitive quotation, and thereafter he knew—

Q. You don't know that?

A. I don't know.

Q. That is what I wanted to establish.

A. Whether this arrangement was in effect, I don't know.

Q. Let's take N-8, that also talks about the Lima News, and that is a salesman—is that another salesman, J. W.?

A. J. W., yes, that is another salesman, James Weiss.

Q. Did you tell Weiss not to go after the Lima News pursuant to the Beverly agreement?

A. No, I didn't tell him, nobody told him not to go after the Lima News.

Q. Do you know whether or not you told Weiss prior to January 30, 1957, in connection with any other account, not to go after the account because of the Beverly agreement?

A. No, I don't know. I don't know any specific instance where I or anybody else—I had overall interest in this readyprint business, but some of the detailed things were handled by others in the office.

Q. So that as of January 30, 1957, Mr. Weiss might not have known about the Beverly agreement?

A. As of January 30, 1957; I don't know.

Q. All right. Now, do salesmen's quotations have to be approved by the home office or by anyone, or are they free to make quotations and that is it, or make arrangements? Let's take the Lima News situation; did Mr. Weiss or Mr. Hanson have the authority to consummate the transaction with the Lima News at the terms they suggested without authority from anyone at the Cleveland office?

A. They needed the information from the Cleveland office as to what the costs—the printing costs of the section would be. They were under the supervision of the Cleveland office.

Q. Did they also need instructions from the Cleveland office as to what price to be quoted, or range of prices to be quoted?

A. Normally, yes.

2837 Q. So that if someone in the Cleveland office made—that someone being you or Mr. Borglund or Mr. Gamble—made the determination that this was an account that you were not going to abide by the Beverly truce agreement, then you would give him a price that would permit the salesman to get the account, is that correct?

A. We would give him the prices from the Cleveland office, normally, this is correct.

Q. Here is what I am trying to find out. Is it the fact that if there was a situation where you decided you were going to honor the Beverly agreement, and he asked for a quotation, and the salesman did not know about the Beverly agreement, you would give him a price that would not be competitive, and

he would still not know about the Beverly agreement, and submit the price?

A. He would know something was wrong. He knows, in the instance of Lima, we were pricing this thing so low, that is no question he knows he has the right price.

Q. If he knew the price was too high, you would know that, you would have to tell him it was because of the Beverly agreement?

A. Because—yes, not because of Beverly, we wouldn't
2838 put it that way. That is a word that has come up since the trial.

Q. What would you tell him?

A. That we were not going to try to take this particular King run.

Q. Did you tell him why?

A. I don't think we did, but something like this gets around. We didn't specifically tell him.

Q. It does not surprise you a salesman would infer it was because of the sale of Buffalo Color Press and the arrangement with King?

A. He would not infer because of the sale of Buffalo Color to Greater Buffalo—I don't know what a salesman would infer. He would infer we were not being competitive against King on this run printed by King, yes.

Q. He would infer this was deliberate, he would know it was deliberate?

A. Yes.

Q. Now, in the early part of 1955—let's take the period of time somewhere around August, when you first learned that International had acquired—excuse me—when you learned Greater Buffalo had acquired International stock. Do you recall whether or not it was common industry knowledge then that International printed exclusively for King?

2839 A. I don't know about the industry. We knew that this was a captive plant of King's.

Q. You knew it?

A. Yes. Others knew it, I am sure.

Q. Is this the fact—I don't want to put words in your mouth—I am leading you to see whether it is the fact—is it a fact that you knew that King had most of the contracts with newspapers in the southeast and those were being printed at International?

A. Yes, I knew that King had the bulk of the business in the southeast. Certainly they had ten times as much as we did.

Q. You also knew at that time that International and King were preparing to open a plant in the south, in the Sylacauga area?

A. No.

Q. What did you know about that?

A. We were scrambling wherever we could to find out what we could about the plant in Sylacauga, in Lufkin, in Childersburg, Tennessee, all those places. All we knew was what we picked up from newsprint suppliers, and writing as far down to our salesman in Dallas and asking him. This is what we knew. We were trying to get as much information as we could.

A. Now, in August of—strike it out.

2840 A. What time is this you are talking about?

Q. In October of 1955 when you signed the contract with Greater Buffalo providing for the printing for NEA, you refer, on page 3, paragraph 3, that printing may be done either at the Greater Buffalo plant in Buffalo, New York, or the plant in Dunkirk, New York, or the plant now being constructed at Lufkin, Texas and Sylacauga, Alabama, and any other plant they may construct. Did you know at that time that International and King and Greater Buffalo—strike it out. Did you know at that time that International was planning for the construction of a plant at Sylacauga, Alabama?

A. No, we didn't.

Q. Did you know that Greater Buffalo was planning to build a plant at Sylacauga, Alabama?

A. Yes, we knew that.

Q. What did Mr. Koessler tell you about that, if anything?

A. Well, I know Mr. Koessler didn't tell us very much, I would be sure of that. When he actually told us, yes, he was going to build a plant in Lufkin and Sylacauga, I don't know. Probably about the time it became general knowledge.

Q. Well, it certainly was——

2841 A. But——

Q. —it certainly was in October because that is in the agreement?

A. That is right.

Q. I am trying——

A. No question about it.

Q. I am trying to get your present recollection. I know it is difficult to think back. It was in August of 1955 that you learned he bought International, between August and October you were discussing the details. I am trying to find out whether it was sometime during that period that you learned from Mr. Koessler he planned to build a plant in Lufkin and Sylacauga?

A. I wish I could help you. I have no frame of reference as to when we first knew that Mr. Koessler was building in Lufkin or Sylacauga.

Q. Let's approach it this way. You testified earlier today that when you learned that Greater Buffalo had purchased International, this gave you a great deal of concern, did it not?

A. Yes, it did.

Q. Why?

A. Here was a complete change in the printing industry. We had looked at King having a captive plant in
2842 Wilkes-Barre that we knew was becoming in a run down condition. We felt King had favorable printing prices because they were bleeding that plant. We didn't know how long that could go on. We had about a tenth or a ninth of the business they had. So when we found that Greater Buffalo Press had bought International and the situation was now changing, we didn't know which way it was going or what it was, but the situation had changed.

Q. What did you fear about the situation?

A. I don't operate on fear.

Mr. MOORE: Will you please not answer the question so I can make an objection. I can't sit by and just——

The COURT: Do you object to that?

Mr. MOORE: Yes.

The COURT: Sustained.

Mr. BERNSTEIN: Your Honor, might I state at this time that I don't think——

The COURT: What were the facts surrounding the entire industry that you knew about, that you considered this acquisition was going to affect in some way, and if you had
2843 some knowledge, how did you feel it was going to affect the trade practice; not what you feared.

The WITNESS: Yes, we had concern about it. Here was a new situation we were presented with in the printing industry. We had a color printing plant in San Bernardino, Acme. We

had previously tried to interest other printers in the smaller readyprinted color comic supplements. We had tried to get World Color, a tremendously big printer of comic books, not comic supplements, but they didn't like the business. We were now——

The COURT: That was your bread and butter, that pre-printed——

The WITNESS: Readyprint business, that is right.

The COURT: You can't hope to compete in the other type of color comic printing?

The WITNESS: The larger runs largely are not for us.

The COURT: You knew that, you knew what you had to have for your bread and butter, you knew International had been sold to Koessler, that it presented a dilemma?

The WITNESS: It did.

The COURT: Will you tell me, as a printer or publisher, what in the trade that presented to you?

The WITNESS: We had to have competitive printing prices with King Features and others in the business. Now, if Koessler were going to go into International, we wanted to—we were concerned that he would build up that plant and still King would have the old price structure, the advantage on the smaller runs.

By Mr. BERNSTEIN:

Q. And that King wouldn't only have the low pricing structure, he would have a more efficient plant and a plant that would be financed by the better finances of Greater Buffalo Press?

A. That is right. The other consideration was that we didn't know would Greater Buffalo close up Wilkes-Barre and move the work to the plant they talked about in Sylacauga. We had no idea what was going on here, and while we had these other printing plants, the bulk of our work was at Greater Buffalo.

Q. You mean Buffalo Color?

A. No, I am sorry, this was going over to Greater Buffalo Press. Buffalo Color Press—we were on the verge of selling that, that was gone. We could not at this time have re-established Buffalo Color Press.

Q. Excuse me, we are mixing up the time period.

The COURT: You wanted to have the same printing facilities with Koessler that you always had?

The WITNESS: Yes.

The COURT: Your fear was that in some way that might disappear?

The WITNESS: We were not concerned that he would back up on the agreement he made with us, but we were concerned as to what King's competitive situation would be now, having Greater Buffalo's know-how going down to Wilkes-Barre, what their pricing structure would be there.

By Mr. BERNSTEIN:

Q. In August 1955, when you learned Greater Buffalo 2846 had acquired International, you had already been in negotiation with Mr. Koessler concerning the purchase of Buffalo Color Press?

A. Yes.

Q. Had NEA made a determination at that time that it was going to close up Buffalo Color Press, had a final determination been made as to that or were you in the process of negotiating depending upon—

A. We were pretty well determined, we had no way to go with Buffalo Color Press.

Q. You were pretty well determined that that was not going to be your source of printing. Had you been pretty well determined by that time, in August of 1955, that Greater Buffalo was going to be your printer?

A. Greater Buffalo—this was the arrangement, this was the part we were working on in the sale of Buffalo Color Press. Yes, I have said that several times, yes, that is right, you are right.

Q. I am not making myself clear. In August of 1955, after you had determined—or prior to August 1955, you had at some point reached a determination that Buffalo Color Press was no longer going to do the printing?

A. Right.

Q. At that time did you give consideration to other alternatives?

2847 A. We had given consideration to other alternatives.

Q. I am talking—

A. At that time.

Q. After you made the determination that you were not going to continue Buffalo Color Press, did you give consideration to other alternatives, other printers other than Greater Buffalo?

A. I am sure we had given consideration to other alternatives. I mentioned we had previously talked to World Color in St. Louis. They were certainly the best source if they were going into the business. But the consideration didn't lead to much of any other solution, other than to sell Buffalo Color Press to Greater Buffalo, as we planned to do.

Q. Did you ever discuss with any other printer, World Color or Acme or Eastern or any other color printer, the kind of arrangement that you discussed with Greater Buffalo, selling them the good will of Buffalo Color Press?

A. No, we did not.

Q. You never discussed with any other color printer about selling them the accounts?

A. There was no other color printer that would buy the accounts. No, we didn't.

Q. You then reached a determination that Buffalo
2848 Color Press was not going to do any printing, you were negotiating the deal with Greater Buffalo Press. In August of 1955 do you recall whether or not you were pretty much convinced that deal was going through with Greater Buffalo, you did not know the price, the exact terms?

A. Yes, by that time we were pretty sure we had an arrangement.

Q. It was a question of threshing out the details?

A. Yes.

Q. When you then learned that Greater Buffalo Press purchased International, were you still concerned about the situation or had that been before?

A. We were still concerned.

Q. Why were you concerned?

A. Because King now had a new printer who had the know-how and the facilities for printing color comic supplements better than International could continue to do under their situation. We knew of International's pricing structure. We were concerned about the comparison between International's pricing structure and Greater Buffalo Press's pricing structure.

Q. Did you make any effort to get Greater Buffalo into negotiations to give you the same pricing structure as International had with King?

2849 A. We certainly talked about pricing on the printing they were doing for us. Mr. Koessler said—I am sure—said that these were the standard prices he had for everybody.

they didn't vary, these were the prices that he had for our runs. The question was the payment they would make to us on our return of capital and on our sales commissions.

Q. Now, after P-28, the contract between NEA Service and Greater Buffalo Press was signed, did NEA transfer all of the printing that was being done at Buffalo Color Press to Greater Buffalo Press?

A. Well, not at that time. That was signed October 23rd. In early January of 1956——

Q. Excuse me, did you——

Mr. STEVENS: Did you say after P-28 was signed?

The WITNESS: I don't know what P-28 is.

Mr. BERNSTEIN: I said that.

Mr. STEVENS: You mean after P-27?

Mr. BERNSTEIN: P-28 is the same agreement between NEA and Greater Buffalo Press.

Mr. STEVENS: It is not. It is the agreement between NEA and Greater Buffalo, but it is not the same agreement.

2850 By Mr. BERNSTEIN:

Q. Let's talk about that——

Mr. STEVENS: If you are talking about transferring the assets of Buffalo Color Press, it ought to be related to the Buffalo Color Press contract, which is P-27.

By Mr. BERNSTEIN:

Q. I show you P-28 in evidence, Mr. Anderson——

A. This is P-28 you handed me here.

Q. You have P-28. Was that executed at or about the same time as P-27? I will show you P-27, that is the Buffalo Color Press agreement. Was it executed at the same time?

Mr. STEVENS: We will agree it was.

The WITNESS: Yes, it was.

By Mr. BERNSTEIN:

Q. Was it negotiated and discussed during the same time? Was it all one transaction?

A. Yes. I don't know which way we approached it, it was one transaction, all part of one——

Q. The reason for the two agreements was that P-27, 2851 in addition to providing for printing prices for newspapers that were then printed at Buffalo Color Press, also makes provision for the sale of equipment and inventory and something else, is that correct?

A. That is not the reason. This does make provision for it and perhaps is one of the reasons.

Q. P-28 is an agreement between NEA Service and Greater Buffalo Press which merely pertains to the printing, is that correct?

A. Yes, this pertains to the printing of new business.

Q. The terms and the prices and everything else are the same?

A. Yes. Perhaps I should explain one reason why there are two contracts, if you would like?

Q. Yes.

A. Buffalo Color Press was owned 60% by NEA and 40% by the E. W. Scripps Company.

Q. E. W. Scripps Company was the parent company of NEA, is that correct?

A. Yes.

Q. At that time?

A. Yes.

Q. So that Buffalo Color Press was owned 40% by E. W. Scripps and 60% by E. W. Scripps' wholly owned subsidiary, NEA?

A. That would seem correct, yes. As I said, NEA 2852 owned 60% of the stock, E. W. Scripps Company owned 40% of the stock. E. W. Scripps is the parent company and one of the major stockholders of NEA.

Q. That was an important reason for the two different—

A. No, this isn't the reason. The reason for this, this was being sold as a property, there was a reason for a division of the sale, what we got for the property, between the two stockholders. If you recall, the Scripps-Howard Company had come up to Buffalo and bought the Buffalo Times at one time and dropped a great deal of money keeping it going. This was back in 1935 or 1939. They had a loss picture. I don't want to go back too far. They had a loss picture, this was a return of capital against the loss Scripps had taken here in Buffalo.

Q. The fact remains that the only company that had contracts with newspapers for printing was NEA Service, Incorporated, is that correct?

A. No—you mean of the work that was done at Buffalo Color Press?

Q. That is correct.

A. No, that isn't correct.

Q. Buffalo Color Press, as you testified earlier—I apologize—had a direct contract with the Chicago newspapers?

2853 A. And directly with the Scripps—for the Scripps Howard Sunday papers.

Q. Now, as the agreement actually worked out, insofar as those papers were concerned, and insofar as the papers that NEA had contracts with that were printed at Buffalo Color Press, after January 1956, when Greater Buffalo Press paid a sum of money for printing those papers, that money ultimately—half of that money ultimately came to—strike it out—instead of half of the money I should say 60% of that money ultimately came to NEA, is that correct?

A. That is correct.

Q. And that has continued on?

A. That is correct.

Q. Is it—

A. It is, insofar as—unless we have lost—NEA has lost any of these customers here, the payments do not continue. Outside of that, yet, payments are still continuing.

Q. To this very day?

A. Yes.

Q. 40% Greater Buffalo Press is paying to E. W. Scripps Company, is that right?

A. 40% goes to E. W. Scripps Company under the contract you call P-27.

2854 Q. To this day?

A. Yes.

Q. Under P-28, where NEA has the contract with Greater Buffalo, there NEA gets 100% of the amount paid by Greater Buffalo for newspapers that were not then being printed at Buffalo Color Press, which NEA subsequently—

A. This is our selling commission. It is about 5% of the total cost of a section. It isn't a kickback, Mr. Bernstein, that you would like to call it.

Q. I don't want to engage in a debate with you. We will argue that to the Court. I want to get the facts out and the facts are that on some of the runs that are listed, are identified, in P-27, that are still being—still NEA's accounts, NEA is getting 60% from Greater Buffalo and the Scripps Company is getting 40%, and on other runs NEA is getting 100% from Greater Buffalo?

A. Under P-27, the Scripps Company is getting 40% and NEA 60%. Under P-28, NEA is getting all of it.

Mr. STEVENS: I would like to say that that is exactly what the agreement says.

By Mr. BERNSTEIN:

Q. At the time, in August of 1955, during your period of negotiations with Greater Buffalo Press, is it a fact that you also knew that King and Greater Buffalo were competitors in the sale of printed supplements?

A. Yes.

Q. And you have testified that King and NEA were competitors?

A. Yes.

Q. And did you have any discussions with Mr. Koessler concerning the effect there would be and the nature of the competition after Greater Buffalo bought International?

The COURT: Excuse me, could you hear that question?

Mr. BERNSTEIN: I will state the question again, differently this time.

By Mr. BERNSTEIN:

Q. In and around August of 1955 did you, Earl Anderson, give any consideration to the effect there would be on the competition between King and Greater Buffalo with Greater Buffalo's acquisition of International?

Mr. MOORE: Objection.

The WITNESS: I didn't—

Mr. MOORE: Wait a minute, wait a minute, wait a minute. I object to the form of the question.

2856 Mr. BERNSTEIN: May I be heard with respect to the objection?

Mr. MOORE: May I elaborate on the objection, if you are going to give a speech about it. My objection is to the form of the question, did he, Earl Anderson, give consideration to something. He is calling for the operation of the man's mind.

The COURT: Sustained.

Mr. BERNSTEIN: May I be heard with respect to that?

The COURT: Here is the way to put it. This gentleman is in the business, things are happening, he took certain action or he didn't. These general questions are objectionable.

Mr. BERNSTEIN: May I be heard on that?

The COURT: First I will rule on it. Sustained. Go ahead.

Mr. BERNSTEIN: I wanted to be heard before the ruling, your Honor.

The COURT: Nunc pro tunc.

Mr. BERNSTEIN: I do not regard that question as objectionable. I feel it is a question of fact, as to what the state of
2857 mind was of a competitor at a particular time, and that—

The COURT: He was worried, he admits that. If that is what you wanted him to say, I am sure he would.

By Mr. BERNSTEIN:

Q. Mr. Anderson, I am asking about the fact of what you did—

The COURT: That isn't what you asked him before.

Mr. BERNSTEIN: I am asking him to state what he did, if anything.

By Mr. BERNSTEIN:

Q. What did you do with respect, if anything, to the effect on competition there would be between King and Greater Buffalo after Greater Buffalo acquired International; did you do anything?

A. I don't remember.

Q. After Buffalo Color Press—strike it out. At the time Buffalo Color Press ceased its operations was NEA having printing done for it at any plants other than Greater Buffalo Press and Buffalo Color Press?

A. At the time, in early fifty-six, we had printing done
2858 for us at Acme Color Print in San Bernardino.

Q. Anywhere else?

A. No.

Q. Now—

A. No.

Q. Now, after Buffalo Color Press terminated operations did you continue to have printing done for you at Acme in San Bernardino?

A. Yes.

Q. Did you transfer any runs from Acme to Greater Buffalo?

A. I don't recall.

Q. Please try and recall whether or not you also had some runs printed at World Color at the time of the discontinuation of the Buffalo Color Press?

A. You are right. We still did have some runs—World Color was printing some runs for us after we closed Buffalo Color Press, and this continued up until late 1956.

Q. Then what happened, what did you do with those runs?

A. Those runs were moved to Greater Buffalo Press at the request of World Color. We didn't abandon World Color, they wanted to get out of the business.

Q. And did World Color—strike it out.

The COURT: Let me ask you, Mr. Bernstein, and you, Mr. Stevens. We had some idea that we were going to finish today. I am particularly concerned with whether you are going to be able to finish with Mr. Anderson. I assume he would like to go to Cleveland. But if you can't, you might as well tell him now. There will be some redirect, and perhaps Mr. Moore may have some questions. How about you, do you think you are going to finish the cross-examination tonight?

Mr. BERNSTEIN: No, your Honor, we still have the tie-in phase of it. I would estimate, at the minimum, we have two more hours with Mr. Anderson.

The COURT: Can I bind you to that now?

Mr. BERNSTEIN. Bind me to two hours, your Honor.

The COURT. Gentlemen, I normally would be glad to run until five and send Mr. Anderson on his way. Obviously, there is no chance. We will quit at the ordinary time of four-thirty and start at ten and we ought to have you on the way. If the estimate is right, about noon. Is that correct?

2860 Mr. BERNSTEIN: I am confident of that. I will be bound by it.

The COURT: I hope so. Good night, gentlemen.

(Thereupon the Court was in recess at 4:30 P.M.)

2861 (Proceedings of July 14, 1967, commencing at 10:00 A.M.)

EARL ANDERSON, having been previously duly sworn, resumed and testified further as follows:

CROSS-EXAMINATION

By Mr. BERNSTEIN (Continued):

Q. Mr. Anderson, inviting your attention again to P-27 in evidence, the contract for the sale of Buffalo Color Press to Greater Buffalo, and inviting your attention to page 2 where Buffalo Color Press agreed to turn over to Greater Buffalo Press "on the closing date all our supplement printing for the following named customers: NEA Service, Inc. of Cleveland,

Ohio, a named customer which also places orders for the named customers shown in Appendix B; United Features Syndicate——"

—was United Features Syndicate any affiliate of Scripps or Scripps-Howard?

A. Yes, it is.

Q. What was it at that time? Is it the same today?

A. I believe it is the same today.

Q. What was it then, what kind of organization?

A. It is a newspaper feature service, a syndicate. It sold comics, Sunday pages, daily comics, Sunday comics, columns.

2862 Q. How did it differ from NEA?

A. In the manner I talked about when I described NEA daily full service, in that they are strictly a syndicate, they sell their daily features separately to the newspapers, they can buy one of them or two of them, they sell them separately; and we are a service organization, offering a newspaper a complete service for the entire feature needs of their newspaper.

Q. Is United Features Syndicate like NEA, another branch of E. W. Scripps Company?

Mr. STEVENS: I object to the word "branch".

The COURT: Well, it is——

Mr. BERNSTEIN:

Q. Is it a wholly owned subsidiary of E. W. Scripps?

A. NEA is a subsidiary of E. W. Scripps Company. I believe the corporate setup of United Features Syndicate—I am not sure—it is part of the Scripps-Howard organization.

Q. Do you consider it part of the Scripps family?

Mr. STEVENS: We will agree it is an affiliate of E. W. Scripps Company. I don't know myself, your Honor, what its position is.

The COURT: I think we will have to leave it there.

2863 Mr. BERNSTEIN: Yes, your Honor.

By Mr. BERNSTEIN:

Q. Then reference is made in paragraph 3, page 2, to the United Press Associations of New York, New York, a named customer which also places orders for the named customers shown in Appendix D. Was United Press Associations in New York, an affiliate of Scripps?

A. Part of the Scripps-Howard organization, yes.

Q. What business was that in?

A. They are a newspaper service, news service, news wire service and news picture service.

Q. Did they also sell comic color supplements?

A. Not generally. I believe, without going back to look, this was probably a foreign customer. Generally, they were not selling readyprinted features, comic supplements.

Q. Look at Appendix D.

A. I don't seem to have Appendix D.

Q. All right. Then the next business that Buffalo Color Press agreed to turn over to Greater Buffalo Press was the Chicago Daily News of Chicago. Was that a Scripps affiliate?

A. No, it wasn't.

2884 Q. And was that——

A. It is not.

Q. Did NEA have any contractual relations with the Chicago Daily News for color comic supplements?

A. No. The contract or agreement with the Chicago Daily News was held directly by Buffalo Color Press.

Q. So that after Greater Buffalo Press commenced the printing pursuant to this contract, NEA received 60% of the revenue from the printing for the Chicago Daily News of Chicago, is that correct?

A. As a former stockholder in Buffalo Color Press.

Q. That is correct, isn't it?

A. Yes, that would be right.

Q. And the next company mentioned is the Indianapolis Times of Indianapolis, Indiana. Was that in the Scripps family?

A. Yes.

Q. The next was——

Mr. STEVENS: We will stipulate that the Columbus Citizen of Columbus, Ohio; the Indianapolis Times of Indianapolis, Indiana; the Knoxville News Sentinel of Knoxville, Tennessee; and the Evansville Courier Press of Evansville, Indiana, were Scripps-Howard affiliates.

2885 Mr. BERNSTEIN: Thank you very much.

Mr. STEVENS: No problem on that.

By Mr. BERNSTEIN:

Q. Now, after these newspapers, the Scripps-Howard affiliates and the Chicago Daily News, printing was turned over to Greater Buffalo Press, do you know whether they entered into contracts with Greater Buffalo Press for the printing, do you know that?

A. No, I do not know.

Q. Prior to Buffalo Color Press's demise, Buffalo Color Press had the contract with these newspapers for the printing, is that correct?

A. We had the arrangement for printing them. Now, whether actual contracts existed with the Scripps papers or with the Chicago Daily News, I would have to refresh my memory. I think there was a letter of agreement or perhaps a contract with the Chicago Daily News.

Q. You don't know whether there was a formal contract between these newspapers with Greater Buffalo Press or whether the same informal arrangement continued?

A. It wasn't an informal arrangement. These were set arrangements, the price and this sort of thing, for the 2886 printing. I don't know what contracts or lack of contracts Greater Buffalo Press has with the Chicago Daily News or with the Scripps-Howard papers.

Q. Very well. Will you describe for us, please, the nature of the competition between NEA and Greater Buffalo Press before Greater Buffalo Press purchased Buffalo Color Press?

A. We were printing sections at Buffalo Color Press. We also—when we couldn't the size section at Buffalo Color Press, or any other printer around the country, we would—Greater Buffalo Press became—we contracted the printing to Greater Buffalo Press. Now, largely, we were in the readyprinted color comic business, smaller newspapers, in which we assembled long runs of readyprint. These were largely our type of work that we were in, in that we were not particularly competitive with Greater Buffalo Press because they were not seeking that type of customer, they didn't have the salesmen in the field to handle that type of customer. Now, in some instances, on the longer runs, of an individual newspaper that had its own makeready, we tried in some instances to be competitive in pricing with Greater Buffalo Press. In most instances we were not successful in that.

Q. You were striving to get the business?

A. Our main interest, our sales effort, was devoted 2887 to the shorter readyprint runs.

Q. You were striving to get some runs from Greater Buffalo Press before the sale, is that correct, of the larger runs?

A. Mr. Bernstein, I can't think of any particular situation. I know that we were trying to find places where we could take

on some of these longer runs and be competitive in the printing of them.

Q. Did you at time compete with Greater Buffalo for smaller runs?

A. I don't recall of any situation. Readyprint runs, you mean?

Q. Yes.

A. I don't recall of any particular situation.

Q. Now, you say "readyprint runs", was there any kind of color supplement printing that NEA did that you did not classify as a readyprint run?

A. That NEA did or Buffalo Color Press?

Q. Buffalo Color Press, excuse me, that NEA did through Buffalo Color Press, or through some other printer?

A. Yes. The Scripps-Howard papers we had were not readyprinted runs, they were longer runs, and each one stood on its own two feet. So those were not readyprinted runs. Likewise,

I think I pointed out, the Chicago Daily News was about 2868 a third of our business, and this was a long run, which stood on its own feet, and it was not considered by us as a readyprinted run.

Q. You testified yesterday about eight-page standards and you said, if I understood you correctly, they were not readyprints because they didn't have all the NEA features in them, is that correct?

A. That is not correct. I did not make myself clear. Perhaps I should clear it up now. A readyprint run is any section in which the makeready is spread over one, two, three or more—I mean, two, three or more papers. This readyprinted section may be made up, as in the instance I showed, of all NEA comics or it may be made up of practically no NEA comics and other comics obtained by the publisher, licensed directly from whatever syndicate he is buying them from. A readyprint may have a great selection of outside comics from other syndicates in it and still be a readyprint.

Q. I understand. Thank you. Did NEA sell readyprints of that type, that had King Features in them, prior to the sale of Buffalo Color Press.

A. Yes, we sold some that had a limited selection of King Features in them.

Q. You sold some that had other syndicates features in them, including NEA features?

A. That was the point I was just trying to make.

2869 Q. And you also sold some that had no NEA features in them, is that correct?

A. I would say there were some that had practically no NEA, there were one or two that had absolutely no NEA.

Q. Did you find yourself in competition with Greater Buffalo Press for any of those kinds of readyprint runs where there were not all NEA features used?

A. With Greater Buffalo?

Q. Yes.

A. No, our competition was King Features.

Q. I am trying to ascertain whether at time you were in competition with Greater Buffalo for some of the smaller runs, readyprint or non-readyprint?

A. Greater Buffalo Press had as customers the Chicago Tribune, and they also had a readyprinted color comic section and that was printed by Greater Buffalo Press. So we run up against that sometimes, yes.

Q. Now, as far as the runs that Greater Buffalo Press was printing for NEA prior to the sale of Buffalo Color Press, were they for larger runs or smaller readyprints?

A. There were smaller readyprint runs of the six-page standard section. Buffalo Color Press didn't have the equipment to handle it. That was typical of the six-page standard I showed here.

2870 Q. Was that the bulk of what Buffalo Color Press was doing for NEA?

A. I would have to look at the list of customers we had at that time. I am not sure of that.

Q. Can you answer this; do you know whether Greater Buffalo Press was in competition for any of the runs that you turned over to Greater Buffalo Press to print for NEA prior to the Buffalo Color Press sale?

A. No, I don't know they were—I think they were—I don't know if they were in competition, I suppose they were in competition for the Chicago Daily News, possibly, for the Scripps papers, they were the type of runs they could handle more efficiently than we could.

Q. In turning over the runs to Greater Buffalo Press to do the printing for NEA—this is before the sale of Buffalo Color

Press—you did not regard them as competitors for that business you were asking them to print for you, is that correct?

A. If our man went out in the field and sold the sections—this is a matter of development when you go out and sell ready-printed color comic supplements, it is a matter of putting a package together—and Greater Buffalo wasn't in that business. This is a sales engineering job, to build a readyprinted package.

2871 So that kind of competition did not normally exist.

Q. Did you give any consideration to this. Here Greater Buffalo Press had the mats, they had the makeready had it all set up, and it was printing for NEA. Did you give consideration to the fact that Greater Buffalo Press would solicit that particular customer when the NEA contract would be cancelled, and take the business away from NEA?

Mr. MOORE. Just a minute. I object to that as coming in against Greater Buffalo Press, whether he gave consideration to something that Greater Buffalo might possibly do. I can't think of a more conclusory, speculative question. What bearing does the consideration that this man may have given anything have on it, how is it binding on us?

Mr. BERNSTEIN. May I be heard?

The COURT. Go ahead.

Mr. BERNSTEIN. The Government's point is; competition is at issue in this case. Competition is a state of mind, it is an attitude, it is the manner in which somebody seeks or refrains from seeking business. The Government's contention is
2872 that when there is at issue the state of mind of one of the parties to a transaction, that that becomes a factual matter to be evidenced by the testimony of one of the parties who was involved. He can testify as to what his state of mind was at that time because it is a fact, if it is the fact. Many witnesses were asked on the stand were they in competition, were they not, was he a competitor——

The COURT. You mean in competition or thinking about it? I suppose everyone is in competition or may be with potential customers and wonders about it, but I think the criteria is what did they do.

Mr. BERNSTEIN. That is the question.

The COURT. What overt acts were done?

Mr. BERNSTEIN. If you give consideration to something, and

decide to do nothing, the absence of doing something is a fact, and you have to show that the consideration was given
 2873 and a decision made to refrain from doing something.

The COURT. I think you have to show your overt acts first. Sustained. Something happened, you don't put it together that this is the result of his thinking. He did something either with Koessler or others, that is another side of the coin.

Mr. BERNSTEIN. Very well, your Honor.

Mr. STEVENS: Objection.

By Mr. BERNSTEIN:

Q. My question is; prior to the sale of Buffalo Color Press did you or NEA do anything to prevent Greater Buffalo Press from printing the same readyprints for those newspapers customers that you turned over to them to print for NEA when the NEA contract would expire?

A. Only in the sense they were our suppliers. You have to have some faith in this business. We put runs in World Color, we went to them and said, "Will you print for us?" and there was nothing in the world to stop World Color from selling it directly.

2874 Q. Did they ever do it?

A. No.

Q. Did Greater Buffalo Press ever solicit the customers that you turned over?

A. I wouldn't expect them to. The ones where we came in and said, "Look, will you print the sections for us?" now, for them, the supplier of us, or in any business, for the supplier to go out and say, "I am going direct to sell this customer that you have sold previously", seems to me would be a violation of good business ethics. I guess there is some faith in this business.

Q. That is exactly the answer that I was trying to bring out.

The COURT: He said that it is so unheard of, unthought of in his mind, that his printer would turn around and say, "Skip that salesman, I'll print it for you directly." In the nature of things, I assume his answer is no.

Mr. BERNSTEIN: That is the Government's point, your Honor.

By Mr. BERNSTEIN:

Q. So that after the sale of Buffalo Color Press, when
 2875 you turned over to Greater Buffalo Press all of the accounts listed in the schedules attached to P-27, and also the accounts referred to by reference in P-28, your ex-

pectation was that Greater Buffalo Press would not compete for those accounts, isn't that correct?

Mr. MOORE: Just a minute. Here we are again, his expectation.

Mr. STEVENS: Objection.

Mr. MOORE: Can't we stay within the confines of the rules of evidence?

The COURT: If you object to it, I sustain it.

By Mr. BERNSTEIN:

Q. I will ask the same question again, Mr. Anderson, did NEA do anything to protect itself from Greater Buffalo Press's solicitation of the accounts listed in P-27 and the newspaper accounts referred to in P-28?

A. P-27, I believe—certainly, NEA was protecting those, we are servicing them, we hold the contracts with them, we go out and help them. P-27 is a list of papers that NEA still is working with. There is a great deal of work to be done all the time, continuously, with these papers that have readyprinted color comic supplements. I hope you understand that.

2876 Q. I do.

A. This is not something you pick off the tree. You continue to work with these papers.

Q. You did nothing to prevent Greater Buffalo from obtaining those customers listed in Appendix B to P-27?

Mr. STEVENS: I object to that.

The COURT: Well, Mr. Bernstein—

The WITNESS: The contract speaks for itself.

The COURT: He said that when he has to sell is service, and I suppose if something good comes on the horizon and the customer is worthwhile, the salesmen tell them about it. He is selling service, he continues to sell it to this day.

Mr. BERNSTEIN: But the Government is trying to—

The COURT: What do you mean, entered into an agreement of some kind or a contract?

Mr. BERNSTEIN: Yes.

The COURT: Was there any?

The WITNESS: The contract is this one.

The COURT: I am talking about another agreement.

Mr. BERNSTEIN: The Government is not alleging any other agreement. The Government is alleging that implicit in

2877 this arrangement it is understood by both parties to the contract that Greater Buffalo won't compete for the business listed in Schedule A.

The COURT: I don't think it is implicit in the sense there is a snide understanding.

Mr. BERNSTEIN: No, no.

The COURT: They are not going to raid each other when somebody has got the contract.

Mr. BERNSTEIN: If we can have a stipulation as to that, that it is common industry practice when a printer prints for a firm like NEA, that it is common business ethics, they would not compete for the customer they are printing, there is no need to pursue this.

The COURT: How can he tell you what other people are doing in the business? He said——

Mr. BERNSTEIN: He has been in the business forty years.

The COURT: I know. He said that he had customers 2878 that he worked hard to get and he hired a printer, and he said, 'In my opinion, it never happened; in my opinion, no one thinks in terms of that, it is against business ethics.' That is what you are saying?

The WITNESS: Yes, I think that is right.

Mr. BERNSTEIN: All right. Very well. That is the point.

The WITNESS: On readyprint runs, these makereadys are ours, bought and paid for at Buffalo Color Press. This is a readyprint run, it is our business.

By Mr. BERNSTEIN:

Q. It is unethical for them to take the readyprint and print the——

A. I am not going to say what is ethical or unethical in this business. This is for somebody else to say.

Q. Take United Features Syndicate and the customers name for United Features Syndicate on Appendix C of P-27; is that the same category as the newspapers that were in Appendix B of P-27?

A. This is a customer that was with Buffalo Color 2879 Press, that was sold as part of the assets of Buffalo Color Press, a group of small eight-page tabloid sections all on one makeready, about eight papers, small papers, involved, I believe.

Q. You did nothing to prevent Greater Buffalo Press from

seeking those accounts as Greater Buffalo Press accounts when the contract expired?

A. When what?

Q. The contracts between the newspapers on Appendix C and United Features Syndicate, Inc.?

A. No. If I understand your question, the answer is no.

Q. Now, the other Scripps-Howard newspapers that had arrangements with Buffalo Color Press, and which were turned over to Greater Buffalo Press, did NEA service those newspapers thereafter?

A. NEA services the Scripps-Howard papers generally, not specifically and particularly on the Scripps-Howard account. We have to assure each business manager of each Scripps-Howard paper—he is looking out for himself—that he has the best printing buy he can get. There is nothing in the contract that says these papers can't leave Greater Buffalo if they want.

Q. Prior to that time the Scripps-Howard papers listed on page 2, paragraph 3, were not obligated to continue with Buffalo Color Press, even if they were in the same family, Buffalo Color Press and NEA had to give them a competitive price, otherwise they would not retain the business?

A. That is still true. That was one of our problems, our competitive prices at Buffalo Color Press, due to our costs, were getting out of line with other competitors printing. That is why we made the little money we did. We were getting out of line.

Q. Even though you were in the same family you regarded them as separate corporate entities, you had to compete as if it was a completely unaffiliated company, is that correct?

A. No, it is not correct.

Q. What is the correct answer?

A. You said we competed as though—we know these people—but, as I said, these people are free to go wherever they want, the business manager of each individual paper is free.

Q. Let's take the Indianapolis Times, of Indianapolis, Indiana, which is referred to in paragraph 3 of page 2—

A. You know the Indianapolis Times is no longer with us.

Q. Well—

A. Any payments from Greater Buffalo for the Indianapolis Times has long ceased, when the paper ceased publication.

Q. Which of the papers on page 2 of P-27 is currently being printed by Greater Buffalo Press?

A. Knoxville News Sentinal.

Q. Let's take the Knoxville News Sentinal. Does NEA service that account now?

A. We do not service specifically—no, we don't service the readyprint. We service the whole Scripps-Howard papers, generally, not specifically, for the readyprint account—not the readyprint account, the printing account.

Q. Does NEA have anything whatsoever to do with the obtaining of color comic supplements by the Knoxville News Sentinal?

A. The Knoxville News Sentinal is free to go where they want for their printing. We would encourage them to stay at Greater Buffalo Press where we can be sure we have the best arrangement for them.

Q. What have you done with regard to having them stay with Great Buffalo Press over the years, if anything?

A. Specifically, I don't know. We have maintained good business relationships with these papers.

Q. Does your salesman call on them?

A. Sure.

Q. For color comic supplement printing?

A. I am sure they take care of color comic supplement
2882 printing when they are there. They are not there for that specific purpose.

Q. Now, my question is whether NEA did anything to—strike it out. NEA does not have a contract with the Knoxville News Sentinal for the sale of color comic supplements?

A. No.

Q. You don't know whether the Knoxville News Sentinal has a contract with Great Buffalo for the printing of color comic supplements?

A. I don't know.

Q. It is printed at Greater Buffalo and NEA receives 60% of the figure mentioned in P-27?

A. Yes, for being a former stockholder in Buffalo Color Press, NEA receives 60%.

Q. After the sale of Buffalo Color Press to Greater Buffalo Press did the nature of the competition between NEA and Greater Buffalo change in any way?

A. I've got to think about that.

Q. Take your time, it's very important, think about it.

A. Did the nature of the competition with NEA, after the sale of Buffalo Color Press—I think we kind of covered that before.

Q. Let me ask you another question. Between August 1955 and October 1955, when you were discussing the turning over of Buffalo Color Press's customers to Greater Buffalo Press, and when you were discussing NEA seeking new business and receiving a payment from Greater Buffalo Press on the printing of the business that NEA would bring in, during those negotiations did you have any discussions at all with Mr. Koessler concerning any runs that Greater Buffalo Press would solicit and runs which NEA would solicit and avoiding competition between Greater Buffalo and NEA in soliciting those runs?

A. No, that didn't come up at that time. In this period we were still talking about selling our Buffalo Color Press plant. Lots of things hadn't been settled up to—almost up to the October period, and we hadn't decided yet what they were going to pay us for the plant, what we were going to get for the supplies we had in there, and none of these things had been settled. Up to that time we were talking largely about what the final arrangement might be here for that sale of Buffalo Color Press. To answer your specific question, no, I don't recall, at that time.

Q. Did there come a time when you had such discussion with Mr. Koessler?

A. As to which customers we would sell and which they would sell?

Q. Which customers Greater Buffalo regarded as Greater Buffalo accounts so that NEA would not solicit?

A. No, I don't think—I don't recall any specific discussion on that. I think it was pretty generally agreed—not agreed, understood, that we were largely in the readyprinted color comic field, interested in the smaller runs, but I don't recall any discussion at all on that. I don't believe there was any such discussion.

Q. Do you recall any instance when NEA salesmen were soliciting business and found out that Greater Buffalo was also soliciting that account? Do you recall any such instances?

A. Now you are going past the time of the sale. Yes, I recall, that is why I told you I didn't think there had been talk about

this. We ran into a couple of clashes. I recall down in Albuquerque, the Albuquerque Journal. That deal was never consummated but I recall that one.

Q. You are talking about P-32 in evidence, the letter to you from Mr. Koessler, and Mr. Koessler tells you that he has a salesman working out of Lufkin and—let's read the letter: "We have a man, Fred Jerauld by name, who is working out of Lufkin on the larger southwest accounts, and Albuquerque, New

Mexico is one of these. We have to get these larger 2885 papers on our own to keep the general overall price in line so we can come out okay. Kenneth says he talked to you on this and we will have a meeting to outline the accounts we wish to keep as our private preserve. It is my understanding that the Albuquerque Journal is not a Scripp paper. The Scripp paper, of course, is yours, if you can sell them a comic section." Which Scripp paper was he talking about?

A. That is the Albuquerque Tribune, I believe. There are two papers in this town.

Q. Now, he says: "Kenneth says he talked to you on this——", do you recall whether he did?

A. No, I don't.

Q. And Mr. Koessler says: "——and we will have a meeting to outline the accounts we wish to keep as our private preserve." Do you recall any discussion with Mr. Koessler concerning which accounts Greater Buffalo regarded as their accounts and that it would not be ethical for you to solicit?

A. No.

Mr. MOORE: What?

Mr. BERNSTEIN: Ethical.

The WITNESS: We didn't have such a meeting.

Mr. BERNSTEIN:

2886 Q. You recall that you didn't?

A. We didn't have such a meeting.

Mr. STEVENS: He said he did not have it. He said it as a fact, a categorical statement.

The WITNESS: We didn't have this meeting that Walter Koessler suggested we have here.

By Mr. BERNSTEIN:

Q. Walter suggested you have a meeting?

A. Or Kenneth, whichever it was. He said, "We will have a meeting." I don't know, Kenneth or Walter. "Kenneth says he

talked to you on this and we will have a meeting——", such a meeting was not held.

Q. Did you do anything, did you communicate anything to Greater Buffalo, either Mr. Koessler, Walter or Kenneth, concerning this request of his to have a meeting?

A. No, I didn't.

Q. Did you discuss that with counsel at all?

A. No, I didn't.

Q. Now, inviting your attention to P-27 again; would you please look at the list of newspapers that NEA turned over that is on Appendix D, and can you tell us whether there is any one of those newspapers that is not now being printed by Greater Buffalo Press?

A. Yes, there are some that are not now being printed.

Q. My question is this; is there any one on there for which you are not getting a commission that is still being printed at Greater Buffalo?

A. No, not to my knowledge, all of them that are still being printed by Greater Buffalo Press.

Q. At Buffalo or Dunkirk?

A. At Buffalo or Dunkirk or at Wilkes-Barre where you have them under injunction, we still get commissions.

Q. Let me understand this. Is there anyone on Appendix D, customers, printed for NEA at Wilkes-Barre?

A. Yes, there are.

Q. Are you getting a commission on that?

A. Yes, we are.

Mr. BERNSTEIN: Will you please read back the last question and answer?

(Thereupon the last question and answer was read by reporter.)

The WITNESS: May I make this clear?

Mr. BERNSTEIN: Yes.

The WITNESS: I think some of these accounts which we lost to King Features are now being printed at Wilkes-Barre on the King Features account. On those we do not receive any royalty. Now—is this clear?

Mr. BERNSTEIN: Yes.

The WITNESS: I think you had a misapprehension about it.

By Mr. BERNSTEIN:

Q. Now, Mr. Anderson——

Mr. STEVENS: Let him finish his answer.

The WITNESS: If King took any of these accounts from us, they are no longer our customers. If Greater Buffalo prints them here, in Dunkirk, in Sylacauga or Wilkes-Barre or anywhere, we no longer get a commission, no longer have a return of capital on these.

By Mr. BERNSTEIN:

Q. That is if they have a contract with King, is that correct?

A. No. If we lost them, no longer hold the contract 2889 for them. Some of these have been lost to Southern Color.

Q. Have any of these been lost to Greater Buffalo?

A. No, I don't believe so. No.

Q. Have you ever lost any customers to Greater Buffalo Press since the sale of Buffalo Color Press?

A. Not that I recall.

Q. All right. Now, is it a fact then—

A. May I make one thing clear? Some of our runs, some of these runs are now printed at Wilkes-Barre on our account by Greater Buffalo Press.

Q. I understand that, that is what I was going to bring out, that some of the runs on Appendix D are printed under NEA contracts by Greater Buffalo Press and they are being printed at Wilkes-Barre?

A. Yes, not because we want them there.

Q. Okay. You prefer they not be printed there?

A. I would prefer they not be printed there, yes. I would like to have them in Sylacauga.

Q. On those accounts that are being printed at International's plant at Wilkes-Barre, NEA receives a commission on those accounts, pursuant to P-27?

A. If NEA still holds the contract for them, yes, you are right.

Q. That is all I wanted to make sure of. NEA does not 2890 have a contract with International?

A. NEA does not have a contract with International, yes, that is right.

Mr. MOORE: Wait a minute. Let me make clear; is counsel talking about a time subsequent to the time when Greater Buffalo acquired International?

Mr. BERNSTEIN: Yes.

Mr. MOORE: Then I don't know what the relevance of all this is.

Mr. BERNSTEIN: It doesn't make any difference whether you know or not, Mr. Moore, the witness is answering the question, and if you have an objection, please state so.

Mr. MOORE: I made an objection to the relevance of the question.

The COURT: Well, no, I think there may be relevancy. We know Greater Buffalo got the Wilkes-Barre plant, and that is the period you are talking about, subsequent thereto?

Mr. BERNSTEIN: Yes.

The COURT: I will hear discussion on it.

The WITNESS: You will have to repeat the question
2891 for me.

(Thereupon last question and answer was read by reporter.)

The COURT: I would be interested in knowing, it doesn't occur to me, you say you prefer that your runs not be printed at Wilkes-Barre?

The WITNESS: What happened, your Honor, is that shortly—I don't remember the exact year—after Buffalo Color Press was sold, our runs were printed in Buffalo or Dunkirk, and somewhere along the line Buffalo had a press down in order to remodel it, and they were short of press capacity, and they asked whether the runs could go down temporarily into Wilkes-Barre. I didn't like it, I agreed to it.

The COURT: I mean, is it harder to get to get to Cleveland or wherever you want it?

The WITNESS: We don't like to have our runs—my
2892 own feeling, personally, is that I don't like to have the runs in a plant that is devoted almost 100% to King Feature business.

The COURT: Well, I don't know about this. Do you think the printing is poorer or would you rather not have it so close to the competition? What can King do to you down there?

The WITNESS: Well, I think—I have faith in Mr. Gorman—I feel King could learn the length of our runs, the sizes of them, the makeup, this sort of thing, in our readyprint color comic supplements.

The COURT: In other words, it isn't a question of poor work, it is a question that you just as soon would not have your com-

petition know too much about your business, either by accident or otherwise?

The WITNESS: Yes. Generally, I think Greater Buffalo does a better printing job, but that is not the essence of it.

2893

By Mr. BERNSTEIN:

Q. Inviting your attention to page 4, paragraph 5; in your contract with Greater Buffalo Press it was your understanding that printing done by Greater Buffalo Press for NEA, if it was done at Dunkirk or whether it was done at Lufkin or whether it was done at Sylacauga, you would get the commission on it. Now, do you know of any runs that are printed, pursuant to that, at Southwest Color for NEA that NEA does get the commission on?

A. Yes, there is business down there.

Q. The only runs printed at Sylacauga or Lufkin or Wilkes-Barre that are listed in Appendix B that NEA does not get the commission on are the runs that are printed pursuant to contract with King, is that correct?

A. Of the named customers here, any runs that are printed for King, which King has the contract, Greater Buffalo contract does not provide for. We do not get payments for those runs. I thought I made that clear. You are misstating it.

Q. It is clear now.

Mr. STEVENS: It was clear before.

Mr. BERNSTEIN: It was clear before.

Mr. STEVENS: What you are trying to do is confuse him.

2894 Mr. BERNSTEIN: No, I am not.

Mr. STEVENS: You certainly were.

Mr. BERNSTEIN: I am not, I will not, I was not.

Mr. STEVENS: You were, deliberately.

Mr. BERNSTEIN: It was not deliberate, I do not intend to.

Mr. STEVENS: Then don't.

Mr. BERNSTEIN: I won't, I never have.

By Mr. BERNSTEIN:

Q. Mr. Anderson, can you recall, to the best of your recollection, how much before August of 1955 you first began to discuss the transaction which ultimately led to P-27, the sale of Buffalo Color Press to Greater Buffalo?

Mr. MOORE: We were all over this yesterday.

The WITNESS: The transaction wasn't discussed prior to early summer. We talked what we were going to do with Buf-

falo Color Press. It was a long-term, continuing problem for us. I go back to 1937, and I was not particularly concerned with those things at that time with NEA. I go back to after the 2895 war, and I became more interested in these things. I would say from 1945, when I came back from the Army, I got——

By Mr. BERNSTEIN:

Q. Certainly from August to October of 1955 discussions were pretty serious, and it was a question of completing the details that led to P-27, is that correct?

A. Yes.

Q. I am trying to find out whether that——

Mr. STEVENS: Wait a minute, would you define what you are talking about, completing the details? What makes you say "details"? They were working out a contract.

Mr. BERNSTEIN: Do you have an objection?

Mr. STEVENS: I do object.

Mr. BERNSTEIN: Will the Court rule on the objection?

The COURT: Now, there were final things they had to agree upon before you entered into a contract for the sale of Buffalo Color Press?

The WITNESS: Well——

The COURT: I am talking about details.

2896 The WITNESS: Sure, there were major items to be discussed as well as details, all along the line. I said earlier we had all these major things up to October to come to an agreement upon.

The COURT: Hasn't he said that before?

The WITNESS: I don't know what you are driving at.

By Mr. BERNSTEIN:

Q. Let me try this. I invite your attention to June 1, 1955——

A. June 1st?

Q. That is right. Somewhere prior to June 25, 1955, what was the state of the negotiations between Koessler and yourself for the sale of Buffalo Color Press?

A. We had a lot of putting together to do after—you mean from June, the last of June until October when we sold the plant or completed the deal, we had a lot of work to do, yes.

Q. I am trying to find out——

A. We hadn't settled what they were going to pay for the plant, what the commissions were going to be. We hadn't talked, I don't believe, I am sure, about the question do they

2807 take over the lease of the plant. All these things pile up here in the sale. Does that answer your question?

Q. Yes, it does. Is this the fact; that by June 1, 1955, Buffalo Color Press had reached a decision it was going to go out of business and that Greater Buffalo Press would do the printing for it?

A. By June 1st—

Q. 1955?

A. I said in the early summer we—

Q. What do you mean?

A. I don't know—we had decided about this time, certainly Buffalo Color Press—before June 1, 1955, we had decided that Buffalo Press was coming to the end of the line and something had to be done about it. Now, as I said earlier, it was about that time that the negotiations were started, we started seriously talking about the possibility of selling Buffalo Color Press to Greater Buffalo Press. Now, those negotiations then went on up close to October 23rd when the final agreement was made.

Q. I understand that. This is what I was leading up to. Did Koessler at any time there in June 1955, and prior to June 25, 1955, say to you that he was then negotiating with Frank Nicht that Greater Buffalo Press would be Frank Nicht's exclusive printer?

A. The first we knew that Greater Buffalo Press had any idea or were going to buy International was the date established in that letter when Herb Walker—let me tell you again—nobody in our concern had any idea that Greater Buffalo—the first we knew was the trade announcement. I don't want to get confused by dates, but the first—I believe that was August 1st—

Q. I am not trying to confuse you. I am trying to ascertain this. There is no doubt whatever in your mind, it is the truth that Walter Koessler never told you at any time that he was discussing with Frank Nicht, Frank Nicht's request that Greater Buffalo Press be the exclusive printer for King Features?

A. Walter Koessler never told us of any discussions that he was going to be the exclusive printer for King.

Q. I believe that.

A. Well, I wish you would, I think I have said it several times.

Q. I believed it right along. I have asserted to the Court that Koessler was saying one thing to you and another thing to Nicht.

A. I don't know what he was saying to Nicht, I know what he was saying to us.

Mr. MOORE: If I may be heard a moment? The scope
2899 and length of the cross-examination is a matter solely within your Honor's discretion. Throughout the course of this proceeding this attorney has continually extended cross-examination, in each instance, hours and hours and hours beyond the scope of the direct. We have been told time and time again that there were fifteen minutes more and we went for two and three hours more and a day more. Now, as it must to all things, an end must come, he is back where he was yesterday, back at 1955, asking the same questions. Must we sit for days at a time and put up with this?

The COURT: No. This is the last day, you can make the most of it. If the case is not finished, it will hang in the balance. I can't tell you even remotely when you can come back. I can tell you that my future is packed with other matters
2900 well into the fall. So govern yourselves accordingly. This is the last for this season.

Mr. BERNSTEIN: Counsel for NEA offered N-12 in evidence—

The COURT: Let me ask you; what possible thing could this gentleman possibly add to what he has given you all day yesterday, I guess part of the day before and this morning? I think this man, if he isn't virtually exhausted, should be. Is there any new points?

Mr. BERNSTEIN: There are new points, your Honor.

The COURT: Let's have one. It would be refreshing to have one new point, even if it isn't a good one.

Mr. BERNSTEIN: The new point is elaboration, clarification of some of the printing practices in the business.

By Mr. BERNSTEIN:

Q. Was NEA and King in virtually the same kind of business?

Mr. STEVENS: That certainly is repetitious. If that is new—

Mr. BERNSTEIN: Do you stipulate they were not?

2901 Mr. STEVENS: I will stipulate nothing with you, not even the time of day.

The COURT: Please. I know all about that. I know about the readyprint that he relied on. I know that King had some readyprint, he had other things beyond readyprint. I have heard about it, if that is your point. Basically, I know that NEA's bread and butter was readyprint.

By Mr. BERNSTEIN:

Q. How many syndicates did you mention yesterday, Mr. Anderson, sell printing?

A. The Chicago Tribune Syndicate; United Features Syndicate; King Features Syndicate; are active in the field. Once in a while somebody else may get in.

Q. Did you ever complain to Mr. Koessler that Nicht was not adhering to the agreement that was made at the Beverly Hotel?

A. We complained to Koessler that price-cutting was still going on. Our complaint was about why, how he could have these kind of prices that appeared to us he had, in making our complaint to Koessler.

Q. What, if anything—this is after the Beverly meeting—what did Koessler say to you?

A. I don't know what he did about it.

Q. Did you ask him to do anything about it?

A. No. I asked him to do what he could to fix up the price, if the price structure was wrong, if that was why we were getting into so much trouble.

Q. Did you ask him to have Nicht adhere to the Beverly agreement?

A. No.

Q. Did you communicate to Mr. Koessler that you were no longer going to adhere to the Beverly agreement?

A. No, sir.

Q. Did you communicate to Nicht that you were no longer going to adhere to the Beverly agreement?

A. No.

Q. Did you have any other contact with Nicht after the Beverly meeting?

A. No, sir. I think I said that before, too. I want to make it clear, we never saw Nicht. I haven't seen him since, Mr. Walker, nobody saw him, nobody in our organization saw Nicht since.

Q. You testified yesterday concerning P-42 in evidence and also P-43 in evidence, and you clarified the fact that Sioux Falls referred to in P-43 is not the Sioux City referred

2903 to in the first paragraph of P-42, is that correct?

A. I hope I did.

Q. Is there any doubt in your mind that P-43, the March 15, 1960 letter, was Mr. Koessler's response to you, to your letter of March 4, 1960, particularly with reference to the information contained in the last paragraph of P-42?

A. In the last paragraph of P-42 I tell him we have a cancellation from the Fargo, North Dakota Forum.

Q. In P-43 he tells you that Fargo and Sioux Falls go together?

A. Yes.

Q. So that P-43 is his response to your letter, P-42, is that correct?

A. Yes.

Mr. STEVENS: I think the witness testified yesterday that the portions with reference to Fargo is in response to the last paragraph.

Mr. BERNSTEIN: I submit that I can maintain my schedule—I made a commitment to the Court yesterday that I would be completed in two hours—if council would not be so helpful, and interrupting all the time—that is what lengthens the trial.

Mr. MOORE: Your commitment was to finish your case in two hours.

Mr. BERNSTEIN: I will be finished in two hours. When I make a commitment I adhere to it, without interruptions from counsel.

The WITNESS: Let me see if I can answer that. He replied that Fargo and Sioux Falls go together, that is what he was telling me. I don't know which of the instances he is referring to in the first two paragraphs.

By Mr. BERNSTEIN:

Q. In the first two paragraphs of P-43 in evidence Mr. Koessler says to you that when Frank Nicht returns to the office he is going to visit with him and tell him that the policy being pursued is just breaking down the market and returning nothing to him except retaliation. What policy was he referring to?

A. I don't know. I was complaining about the price-cutting.

Q. And he says in the last paragraph: "I suggest you destroy this letter." Did you?

2905 A. I don't know. I don't find it in my files so I would assume I did.

Q. One final point. Is it a fact—do you recall, see if you can recollect, that before Greater Buffalo bought International you had heard or it had been announced in the trade that International had started or was going to start a plant in Sylacauga, Alabama, and that you assured yourselves that this would be considered a plant in which NEA's printing could be done when the plant would be opened, in connection with your discussions with Walter Koessler?

Mr. STEVENS: Objection.

The WITNESS: Excuse me?

The COURT: I did not follow that. Did you?

The WITNESS: He tied two things together.

By Mr. BERNSTEIN:

Q. I invite your attention to your testimony in the Grand Jury on page 740——

The COURT: Look, you know the nature of it——

The WITNESS: I think I can answer the question. We heard rumors in the trade that International was going to put up a plant in Sylacauga. We heard this, we were busy trying
2906 to check this out. When we made that contract with Greater Buffalo, we assured ourselves that if there was a plant in Sylacauga, or wherever, owned by Greater Buffalo, we would have access to that plant.

By Mr. BERNSTEIN:

Q. That was discussed with Mr. Koessler sometime between August and October?

A. Yes, sure, it had to be, it is in the contract.

Mr. BERNSTEIN: No further questions, your Honor. I might state, as far as procedure is concerned, your Honor, the Government would like to ask this witness some questions concerning another charge of this case, concerning the tie-ins. That would be immediately after there is redirect, and we would go into the allegations of the complaint against NEA concerning the tie-ins of features and printing. For that part of the case the Government has Mr. Anderson as a witness and possibly one other witness, Mr. Gamble, or we might be able
2970 to get all of the testimony from Mr. Anderson, in which event we will be through in the time stated by the Government.

The COURT: Mr. Moore?

Mr. MOORE: I have just a couple of questions.

CROSS-EXAMINATION

By Mr. MOORE:

Q. Mr. Anderson, Greater Buffalo, during the period you have been testifying to, prior to and subsequent to 1955, did not have a readyprint service, as such, did they?

A. They had a little Chicago Tribune, they didn't have a readyprint then.

Q. They had one readyprint for the Chicago Tribune?

A. That is right.

Q. They were not in the readyprint business?

A. No, they were not.

Q. And this was true prior to 1955?

A. Yes.

Q. And it has been true subsequent to 1955?

A. Yes.

Q. Now, of course, on the larger runs, the runs that were not readyprints, the large runs from the large newspapers, prior to 1955 you found yourself unable to compete with Greater Buffalo, pricewise?

A. That is right.

Q. And that condition continued after 1955?

A. That is right.

Q. During this period prior to 1955, NEA was shopping around for printers from time to time, was it not?

A. That is right.

Q. And was some consideration given or some attempt made to interest printers in establishing a plant in the southwest at one time by NEA?

A. We tried to talk to World Color about such a possibility.

Q. And you found they were not interested?

A. That is correct.

Q. And you are still printing at Acme?

A. Yes, we are.

Q. And have printed there through the years?

A. That is correct.

Q. Acme also sells supplements, does it not?

A. Yes, they sell supplements directly.

Q. They sell both supplements and printing?

A. That is right.

Q. You continued to print with World Color Printing subsequent to the sale of Buffalo Color Press, did you not?

2909 A. Yes, we had runs there until 1956. We have had printing in there from 1957 to 1965, not color supplements, but we are still working with them trying to develop other types of color printing with World Color. We had TV guides in there, we hoped to make a readyprint out of.

Q. What was the reason for ceasing to print color comic supplements with World?

A. World Color decided they had a better arrangement in printing color comic books. They didn't want to get into the readyprinted business.

Mr. MOORE: That is all.

REDIRECT EXAMINATION

By Mr. STEVENS:

Q. Just for clarification, Mr. Anderson; are NEA Sunday color comics, as listed in N-6, included in any one of the three daily services sold by NEA, as reflected in exhibits NX1, 2 and 3?

A. No.

Mr. BERNSTEIN: Objection, not within the scope of the redirect.

The COURT: Overruled.

The WITNESS: No. The Sunday color comics are sold separately from the daily full services shown there.

2910

By Mr. STEVENS:

Q. And they are sold separately and individually?

A. They are sold separately and individually. They are syndicated.

Q. In your testimony yesterday, both upon direct and cross-examination, you said that NEA—I believe I quote accurately—needed breathing space from August 1955 on through the end of 1955 and early 1956. Would you explain what you meant by that term?

A. We start with the fact that Buffalo Color Press was down to the end of the line, it was not competitive, could not help NEA any longer. In the business with Greater Buffalo, we had—in competing against King and International—we had one printing advantage, that is we could assemble a long run of readyprint and our prices were then as good or better than King's. Now, when Greater Buffalo bought International we were concerned that King might also get that advantage from

Greater Buffalo by bringing runs up to Greater Buffalo and having the same price structure we did. In that case King would continue to have the advantage in the shorter runs and also be equal to us in the advantage we had in assembling the longer readyprinted runs. We were also concerned, of course, about International's pricing going to Sylacauga and Lufkin. We wanted to be sure we were competitive in those plants.

Q. You were also interested in whether or not you would be able to get into those plants?

A. Yes.

Q. Now, are these the subjects or some of the subjects that Mr. Walker wanted to talk to Mr. Koessler about, as one of his customers, the way he put it in exhibit P-51, dated August 2, 1955, do you know?

Mr. BERNSTEIN: I object to the leading.

The COURT: Overruled.

Mr. STEVENS: This is redirect.

The WITNESS: This was one of Mr. Walker's great concerns. I was his lieutenant.

By Mr. STEVENS:

Q. You also said at one or more points yesterday that you did not ask for a change either in Greater Buffalo's pricing to NEA or in International's pricing to King. Now, will you tell us how you square those statements with the breathing space explanation you have given us?

A. We asked Walter Koessler to make the King prices the same as ours or to give us the International printing schedule. Walter said that he had inherited a contract from International that made it impossible for him at that time to change the type of pricing structure that International had. I think I said the same thing, I tried to say it yesterday.

Q. Well, are you telling us that your concern for King's pricing was at least abated when you learned that International had a continuing contract and Koessler could not do anything about it?

Mr. BERNSTEIN: I object to the form, going into this witness's concern, feelings, and on the grounds it is leading.

The COURT: Overruled.

The WITNESS: We realized there was nothing Mr. Koessler—if what he was telling us was true—could do about the basis of the pricing structure at International.

By Mr. STEVENS:

Q. Mr. Bernstein asked you some questions with reference to P-36, Mr. Whitehead's sales report, dated January 19, 1956, regarding the General Newspaper Group, do you recall that?

A. Yes, I recall the group.

2913 Q. I believe he invited your attention, as he has frequently, to the third last paragraph in that sales report concerning taking current runs or current contracts away from King. Will you look at the exhibit and tell me if I am correct?

A. Yes.

Q. My question is, do you recall his inviting your attention to this language?

A. Yes, I do.

Q. Somehow my notes on your replies to questions at this point are not good. I would like to ask whether you told Mr. Whitehead what this memorandum or report says you told him?

Mr. BERNSTEIN: I object, your Honor. The record is clear, whether Mr. Stevens' notes are clear or not. The reporter has the transcript. We are going over the same ground we did yesterday.

The COURT: I don't know how you can complain of that. Overruled.

Mr. STEVENS: It is refreshing to have him say it, though.

The WITNESS: I never told—nobody told, to my knowledge, of any responsibility in NEA that under a new arrangement with Greater Buffalo we would not attempt to take current runs away from K.F.S. Whitehead was told, as were the other salesmen, there was now an arrangement whereby we would lay off King's runs.

By Mr. STEVENS:

Q. Did NEA ever have an arrangement with Greater Buffalo not to attempt to take current runs away from King?

A. No.

Q. Between whom was the so-called Beverly truce made?

A. Between King and NEA.

Q. And between them alone?

A. Yes, yes.

Q. You have just mentioned the fact that all of the salesmen were told to lay off then existing King runs and you made that statement yesterday. I am a little troubled because you also said, with reference to Messrs. Hanson and Weiss, that they didn't know about the Beverly truce. Did you mean and do you now—

Mr. BERNSTEIN: I object to any leading on this area, your Honor, as to what he meant.

Mr. STEVENS: I am asking a question.

Mr. BERNSTEIN: You are asking it in a leading form.

2915 By Mr. STEVENS:

Q. Did you mean to qualify your general statement when you spoke about Messrs. Hanson and Weiss?

Mr. BERNSTEIN: I object, your Honor.

The COURT: Overruled.

The WITNESS: What I meant was Weiss and Hanson didn't know about our Beverly agreement. They knew we—they were told there was an agreement, we would lay off the King runs. We didn't tell them specifically we had met at Beverly.

By Mr. STEVENS:

Q. Is there any doubt in your mind, as vice-president and business manager of NEA, that each of its seven salesmen in the field knew the substance of the Beverly truce, whether they knew it was arranged there or anyplace else?

Mr. BERNSTEIN: I object unless Mr. Stevens fixes a particular period of time. The witness yesterday, in examination on this point, he was asked about a particular date, and he said
2916 as of that date he didn't know whether the salesmen had been informed at that time or whether it had come up.

The COURT: He said he had an absolute feeling certainly that they were aware those accounts were not to be touched.

Mr. BERNSTEIN: Later on, your Honor—

The COURT: I don't think so.

Mr. BERNSTEIN: —he was unable to say at that time what knowledge the salesmen had.

The COURT: Do you want to make one final answer on that now, for the benefit of both sides?

The WITNESS: Well, none of the salesmen were told we had met with Nicht at the Beverly. They were told—we didn't have a meeting—we didn't call them together—they were told we were laying off the King runs.

The COURT: This was shortly after Beverly?

The WITNESS: Yes, shortly after Beverly.

The COURT: Until you felt, as I gather, that you were going to abandon any effort to comply?

The WITNESS: That is right.

2917 The COURT: I take it you abandoned efforts to comply because you were getting the short end of it from King?

The WITNESS: Two reasons, yes. We were getting the short end of it from King and we were getting squared away where we could be more competitive in the field.

By Mr. STEVENS:

Q. My notes show that Mr. Bernstein——

The COURT: Let me ask you one thing; you no longer needed the breather as bad?

The WITNESS: No, things were settling down.

The COURT: What had you accomplished that gave you a competitive position?

The WITNESS: Our situation was improved when we found out that the pricing at International was not going to come up to Greater Buffalo Press, and that we were going to be able to get our runs in Sylacauga and Lufkin. They were not improved

too much on International, which is still a very rough, 2918 tough, competitive fight with King, as far as International prices are concerned.

The COURT: All right.

The WITNESS: We were in better shape.

By Mr. STEVENS:

Q. My notes show that you told Mr. Bernstein that you were "pretty sure that you had an arrangement for the sale of Buffalo Color Press," that is, the sale of its assets, in August of 1955. What facts had been settled with Greater Buffalo at that time?

A. I don't recall exactly what had been settled. We had come to an agreement that something would be done with Buffalo Color Press. The major issues had to be resolved and the smaller ones. I can't give you a cut-off point there.

Q. Well, had you informally agreed upon a price for the physical assets in August of 1955?

A. No, I don't think so. That sort of came—we didn't price the plant yet.

Q. How about the inventories?

A. That normally would come later. That was a minor thing, we probably——

Q. This morning you mentioned you hadn't discussed the leases, who would assume or what anyone would pay for those?
2919 those?

A. No.

Q. Had you discussed or certainly had you settled in August of 1955 the payments to be made for the going concern value of Buffalo Color Press, turned over to Greater Buffalo?

A. No, we hadn't.

Mr. STEVENS: I think that is all, your Honor.

Mr. BERNSTEIN: No further questions, your Honor.

The COURT: I guess that is all, Mr. Anderson.

Mr. BERNSTEIN: I want him back again.

The COURT: We will take a little recess then.

(Thereupon the Court was in recess at 11:30 A.M.)

(Proceedings resumed, pursuant to recess, commencing at 12:00 noon.)

Mr. BERNSTEIN: Before going into the tie-in phase of the case, perhaps—strike it out. Now, your Honor, this phase of the case refers to the allegations in Paragraph 28 of the complaint—

Mr. STEVENS: Wait a minute, are you now going into the tie-ins?
2920 the tie-ins?

Mr. BERNSTEIN: Yes.

Mr. STEVENS: I thought you had some more questions of him?

Mr. BERNSTEIN: No.

Mr. MOORE: We have some motions.

The COURT: Let me get the recital of what Paragraph 28 is. You are going into the allegations of Paragraph 28 of the complaint?

Mr. BERNSTEIN: Yes, your Honor, and it has to do with the Government's charge that NEA has sold and presently sells comic features to newspapers at discounts, rebates or reduced prices on the condition, agreement or understanding that such newspaper publishers shall not deal in the color comic printing service offered or sold by any competitor or competitors. In other words, the charge that NEA ties in the sale of its printing to the sale of the copyrighted features.

Mr. MOORE: It is my understanding, your Honor,
2921 that by stipulation of counsel this part of the case has been severed from the main case, and that the defendants whom we represent, Greater Buffalo Press, International,

Dixie, Southwest Color, are not concerned or a party to this phase of the litigation, that, in effect, there has been a severance to this charge and that this charge is now against NEA only and therefore we would no longer appear in this litigation nor participate in this phase of it.

Mr. BERNSTEIN: That is correct.

Mr. STEVENS: That is my understanding. I thought that we would complete the case involving charges under Section 1 and Section 2 of the Sherman Act and Section 7 of the Clayton Act, and when that was closed we would proceed in an orderly manner to this.

Mr. BERNSTEIN: It is a minor matter, it is a technical matter.

2922 Mr. STEVENS: Let's have it that way. We would offer then, re-offer NEA's exhibit Twelve, which was identified yesterday and upon which Mr. Bernstein asked the right to cross-examine, a right which he has not exercised and can only be deemed to have been waived. That is the tabulation which I covered with Mr. Anderson.

The COURT: That is the summary?

Mr. BERNSTEIN: No objection.

The COURT: All right.

Mr. STEVENS: With that, NEA will rest its case on the Section 1 and Section 2 Sherman Act charges against it, and would like to renew the motions which we have heretofore made.

The COURT: The same ruling, I reserve decision on it.

(Thereupon defendant NEA's Exhibit N-12, previously marked for identification, was received and marked in evidence.)

2923 Mr. MOORE: If the Court please; the Government's case against the defendants we represent having been concluded, we would again renew our motions to dismiss the allegations of the claims made in the complaint, which were heretofore argued. I would also like—I assume on the motion to dismiss your Honor will reserve—I would like to put forth this for your Honor's consideration. That on the record now made in this case, I would now move to vacate the temporary injunction which still exists, as not modified by your Honor's order in February of 1962, and which does still restrict to some large degree the movement of printing from Wilkes-Barre to Sylacauga and to Lufkin, and which does quite seriously effect transportation savings that could be afforded newspapers lo-

cated in areas closer to Sylacauga and Lufkin. I think on this record that the vacating of this preliminary injunction, 2924 as it remains, the case for it is quite clear, because the injunction was granted on the Government's theory that Greater Buffalo was going to skeletonize or cannibalize, was the word, International and leave a mere shell, and frustrate any relief the Court might be moved to grant with respect to those facilities. Now, first of all, it seems perfectly clear now that the Government has not made out a case for relief, but even if they had, on the state of this record, contrary to the Government's fears has proven to be the fact. The undisputed record here is that International has not only been preserved, it has been built up into a very thriving entity. The working capital has been built up, it is a self-sustaining entity. The whole basis of this preliminary injunction falls in the face of this rec- 2925 ord, it seems to me, and I see no reason, valid reason, in law or in logic why the injunction should still stand.

The COURT: That calls for a response from Mr. Bernstein, which I am sure he has. I would like to go on with this witness and get him on his way, if we can. Why don't we view it this way; that you made your motion against the case and against the injunction, but let that hang in the balance for Mr. Bernstein's reply. I am not quite sure how I want that to be done. I don't know whether I want to hear that in oral argument today or have you brief those motions and motions to dissolve the temporary injunction, with a response from anybody concerned. I don't know at this moment whether I would like to have that, and perhaps some detailed argument at a later 2926 time after you get the record. I understand you have ordered the record. It seems to me that that is the best thing, rather than try to jam that rather important matter in today. So why don't we hold that in reserve? Maybe you can talk together, perhaps with me, and we can get a time a little later when you got the record, and you can comb it down so the argument can be as trim as possible. You certainly want to respond?

Mr. BERNSTEIN: Absolutely.

The COURT: Let's go on with the examination. You made the motions with the reservation of Mr. Bernstein to reply. Of course, we won't do it now. It may be that it will suit me better to have it briefed and argued in detail. All right.

Mr. MOORE: Does your Honor wish to set a time for briefs? We had rather envisaged that we would want the transcript, certainly, to prepare our briefs.

The COURT: That presents a real problem with Mr. 2927 Noel. He is in the middle of a command performance from the Second Circuit on an important robbery case, very lengthy, on which he has a deadline. Every moment he is going to have to devote to getting that out for the Second Circuit. Unfortunately, he also has some other stuff backed up. After that is accomplished that I know about, that is, the motions that started the other day where the transcript is being ordered in another criminal case.

Mr. BERNSTEIN: I was going to suggest, if I may be heard, if this is the time to do it, I was going to suggest that the Court schedule sixty days after each side has received the transcript from Mr. Noel to submit proposed findings and a final brief, that both submit at the same time, no reply, that the replies be done in oral argument following.

The COURT: Is that satisfactory?

2928 Mr. MOORE: Satisfactory.

Mr. STEVENS: Agreeable.

The COURT: When you send those in it will help me if you give me a letter that indeed this was the understanding, and I will schedule the arguments a reasonable time thereafter.

Mr. BERNSTEIN: One other mechanical part; I take it Mr. Moore does not intend to remain during the Section 3 count. If that is the case, I have a few documents that have already been submitted to your Honor, that your Honor took under advisement, the Nicht documents. I wanted to offer them, have a discussion about them. I don't want to take up the time of the witness, I would like to go on with the examination if we could reserve the right to do this in about five minutes after the testimony is over.

Mr. MOORE: I will be available.

Mr. STEVENS: I think in considering that, you might know that there are some things that we would like to discuss with Mr. Anderson in connection with the Section 3 case. You recall when we spoke about scheduling that at this time, I said that Mr. Karsch, who had done the preliminary work on it, that he was going away. He did, in fact, go for a week, came back, interrupted his vacation, and we just

haven't all of the work done. If it would be of any convenience to anybody, we would as soon have the noon hour to do that and then proceed promptly after lunch.

The COURT: All right. Is that satisfactory?

Mr. BERNSTEIN: Yes, your Honor.

The COURT: Now, these Nicht letters bother me largely because the exact nature of them has not become clear to me as to—I know what they are, I know what they have been characterized as by Mr. Raichle—I am not sure he is right nor you are right. Why don't you offer them, but on that point write me a letter brief as to why you now think they should
2930 come in here. When you do that, send a copy to Mr. Moore and Mr. Stevens, and then let them reply in ten days, and I will decide that.

Mr. MOORE: Maybe on some of these there may be no objection. For example, P-21 is a memorandum from Nicht to Mr. Ward Green.

The COURT: Why can't you sit down together and thresh that out, the things there is no objection to, but on the balance I would rather have you specify the things that are in dispute, why you think they should come in here, and give Mr. Moore a chance to write a similar letter to me, copies to all concerned, as to his position.

Mr. BERNSTEIN: Very well.

The COURT: I want to look at a few cases on that subject.

Mr. BERNSTEIN: May I proceed?

The COURT: Yes.

2931 EARL ANDERSON, called as a witness in behalf of the Government, and having been previously duly sworn, resumed and testified as follows:

DIRECT EXAMINATION

By Mr. BERNSTEIN:

Q. Now, Mr. Anderson—

Mr. MOORE: I take it now we are started on the case against NEA, at this time my appearance will be withdrawn?

The COURT: All right.

Mr. STEVENS: I would like an opportunity to speak to Mr. Anderson over the recess before we proceed.

The COURT: Do you want to talk before this begins?

Mr. STEVENS: It makes no difference. I am perfectly will-

ing to have him proceed now. I thought when I spoke before that it might be expeditious at this time if we recess and then went forward with it this afternoon, but I have no objection.

Mr. BERNSTEIN: I think we might be through by one o'clock if we proceeded with this phase of the case.

2932 By Mr. BERNSTEIN:

Q. Mr. Anderson, I show you a memorandum that you sent to Mr. Walker on August 24, 1955, with reference to the Gary, Indiana Post Tribune, marked P-142 for identification. Have you had a chance to read that document recently, Mr. Anderson?

A. Yes, I have read—looked at it recently.

Q. Does this fairly summarize the facts contained in that memorandum; that in August 1955 NEA quoted a price for a comic supplement that included the rights to seven comics at \$27.50 per week, is that correct?

A. Yes, that is right. Of course, that was never consummated.

Q. I will give you a chance to explain. I want to see if this method hastens it along, rather than reading the whole document.

A. Yes.

Q. And that if those seven comics had been priced separately, the copyrighted rights to the comics would be \$40.00 a week, is that correct?

A. If they were priced separately; that is what the salesman said he would like to get.

Q. King got the business, is that correct, King Features?

A. King Features got that business.

Q. Do you know which features were used, were NEA features used when King got the business?

A. Did we sell NEA features when King got the account? The report doesn't say and—

Q. Do you know?

A. I don't know.

Q. Can you tell me this; was it customary to quote a unit price, including features, when you were competing with King for an account?

A. We made a package. A readyprint is a package. We made a package of the NEA comics and printing into one offer.

Q. That was done quite frequently, is that correct?

A. This is the nature of the business, largely.

Q. This is typical of the way you were submitting bids, is that correct?

A. The typical way we made bids was to make a readyprint package. I don't think it is typical if the comics were priced separately, no.

Q. Let's get at the method by which you priced your comic features. Will you describe that to the Court?

A. The smaller newspapers particularly, but all newspapers are offered comics by a great many different syndicates. They buy some of them. After a while they know in each town about what the comics should be worth. By buying five or six comics he knows he has been paying \$5.00 or \$4.00, and each town has got in mind what that city should pay for comics. Now, this doesn't set a definite price on that particular town because the publisher may put a higher value on one particular comic than another. If he thinks Barney Google is good he may pay another dollar for it, if he doesn't he won't pay anything for it. But, generally, the public knowledge of the field, of what he has been paying, sets a value on the comics.

Q. Does NEA maintain a list price as to what the comics are worth, are to be charged in particular locations?

A. We supply our salesmen with a list that shows generally what the comic price is per circulation. This doesn't apply to each particular situation, it is not a fixed price.

Q. Does the salesman have flexibility to determine, to charge more or less?

A. The salesman on the field, in conjunction with advice from the sales manager. The salesman on the field is the one who finds—determines what the pricing is in that city.

Q. Does NEA have for its own internal purposes a price it regards as the price below which it won't accept for features?

A. No, we don't. We have to—most of the comics divide 50% with the artist and there is a point beyond which you don't normally go. We don't have a base or a top price.

Q. What was meant in your letter when you said if those comics were bought separately by the Gary, Indiana Post Tribune they would be priced at \$40.00, how did you determine that?

A. We had gone in and made a readyprint arrangement, engineered a readyprint in which we put a package of the NEA

comics in it and the advantage of the makeready savings, and offered this to him at a certain price. This became a highly competitive situation. This is the price we arrived at for the ready-print package, which we thought we could sell it at. We reduced the price of the package. Now——

Q. In reducing the price of the package in order to get the complete readyprint business as against King, what you did was that you computed your printing price, you computed your transportation, and then you reduced the price of the comics so that the total price for the whole package would be cheaper, is that correct?

A. For our internal figuring, this was the way we arrived at what the margin is in this particular section. In most instances the publisher——

Q. The publisher got the one single unit price?

2936 A. In most instances.

Q. In this instance?

A. I assume so from reading the report.

Mr. BERNSTEIN: I offer P-142 in evidence.

Mr. STEVENS: No objection.

The COURT: Received.

(Thereupon Plaintiff's Exhibit P-142, previously marked for identification, was received and marked in evidence.)

By Mr. BERNSTEIN:

Q. Now, I show you P-143 for identification, Mr. Anderson. P-143 is a memorandum from you to Eli Minton, dated December 3, 1958, with reference to the Alexandria, Louisiana Town Talk. That is a newspaper?

A. Yes, Town Talk is a newspaper.

Q. Eli Minton, you referred to him earlier in the testimony, but just to clarify, what was he doing at that time?

A. He was our southwestern sales representative.

Q. Have you had an opportunity to read P-143 immediately before taking the stand here, recently?

A. I have read it recently.

Q. And I invite your attention to—I ask you this
2937 question, is it a fact that you instructed Mr. Minton to compute a price for the Alexandria, Louisiana Town Talk for the printed supplement by adding \$2.00 a thousand for the comics, but cautioned him to avoid making the quotation in a form that would permit the newspaper to get the

comics for \$2.00 a thousand, and give the printing to someone else?

Mr. STEVENS: I object, your Honor. I think we are introducing these exhibits, they speak for themselves, and I don't like to have a predigested interpretation. I believe the instrument offered ought to talk for itself.

The COURT: Why don't you offer that as a pertinent document?

Mr. STEVENS: I have no objection, your Honor.

The COURT: Let's have it marked in evidence, and then we will go on with the elucidation on it, if need be. You have to realize, Mr. Stevens, I have become aware there is a jargon in the business, there is trade practices, that to me would mean

nothing. The same as Mr. Anderson said, I think, some
2938 of the lawyers jargon means nothing to him. It may be that I will need some explanation to intelligently read that letter. To that extent, I want it done

(Thereupon Plaintiff's Exhibit P-143, previously marked for identification, was received and marked in evidence.)

The COURT: Now, I take it, Mr. Bernstein, that some of that, except for your study, to you would normally be doubtful as to intent and purpose, and you are now going to try to ask the witness to enlighten me in those areas?

By Mr. BERNSTEIN:

Q. Was that the purpose of your memo to Eli Minton, that you were trying to instruct him that in submitting a quotation to the newspaper, and for the printed supplement as a package, that he could compute the price by adding \$2.00 a thousand for the comic feature rights but that you wanted to caution him to

avoid making the quotation in a form that would permit
2939 the newspaper to be able to ask to buy the comics for \$2.00 a thousand and give the printing to someone else?

A. What we have here is a readyprint comic package. Mr. Minton—what I outlined in the memo—in selling the readyprint comic package already had a profit in the printing of this section.

The COURT: Your price necessarily included the printing?

The WITNESS: If we don't—yes, that is right, that is part of the package. If we don't get the printing we lose the profit we had figured here. So I applied the printing price, the profit we had, against the comics another \$2.00 and it comes out all right. If he don't get the printing, I have no profit left in the printing,

I can't sell the comics for \$2.00, you see. I never offered the comics at \$2.00, I never priced them at \$2.00, because the profit that I had in the printing run took care of the cost of the comics.

I had a good deal more than \$2.00 per comic in this printing arrangement. Have I made that clear?

By Mr. BERNSTEIN:

Q. Not quite. I am trying to ascertain whether—is this the fact; when you were determining what profit you were going to make on the printing, you determined that if you were going to get the printing then you would take less for the comics in order to make it more attractive?

A. This is a package deal, I was getting as much for the comics.

The COURT: He didn't say that. It is like a round trip ticket. You get a one way ticket and it costs more than a return.

The WITNESS: That is right. I want to make it clear, we were not withholding these comics, if he wanted to buy them he could buy them at a fair price.

Mr. BERNSTEIN: I invite the Court's attention to the next to last paragraph of—

The COURT: All I can say is his explanation seems to me very logical. In other words, you made a price for the whole thing?

The WITNESS: Yes, sir.

The COURT: But if somebody wanted to split and grab the goodies without the meat for you, that wouldn't go?

The WITNESS: In the readyprint arrangement I had a profit for the comics I thought was fair, and if he wanted to buy only the comics, he buys them at a fair price.

The COURT: What is wrong with that explanation? If that is acceptable to the Court, what is wrong with it?

Mr. BERNSTEIN: You mean legally?

The COURT: Yes. I am talking about the fact that this is a package deal, that you can't splinter off a piece of it, take the good part without taking perhaps the not-so-good part.

By Mr. BERNSTEIN:

Q. Mr. Anderson, would you sell the—let's take a situation where the newspaper buys the package from you. Now, he has NEA features in that he is using. Now, is it a fact that readership interest develops in that feature so that the newspaper is anxious to continue on that NEA feature. is that the fact?

A. I would hope so, yes.

Q. Is that—

A. That is why he buys them.

Q. So that if he wants—he has the license to publish them, does he not?

A. Yes.

Q. And so that having the license, if he then went to some other printer, Acme, Eastern, Greater Buffalo, and he said to them, "I have the right from NEA, I have the copyrights, you just give me a price for the printing", and they gave them a price for the printing which when added to the price he would have to pay you for the features would give him a cheaper price than the total package that you were offering, he would be free to do that, would he not?

A. We have never withheld any NEA comics from a newspaper regardless of whether they bought the printing from us or not. He is free to go to another publishing plant. He can't, in most cases, find as good a makeready. This is our business, to give him a readyprint section he can buy cheaply. He may go to another printer.

2943 Q. If he went to another printer—if the Alexandria, Louisiana Town Talk, having had the license from you for the features, went to another printer and got a printing charge that was the same price as the printing charge you computed, what would you charge him for the comics?

A. I would charge him the fair market price. Understand, I am not getting \$2.00 per comic under this arrangement. In the package arrangement I am getting more than \$2.00 per comic.

Q. Excuse me. You are either getting more than \$2.00 per comic and less for the printing than you have included on P-143, or you are getting more for the printing than you have on P-143 and less for the comics?

A. This is a package—

Q. You can't have it both ways.

A. I don't know which came first. I don't agree with the interpretation you put on it.

Q. Let's explore that.

A. The matter of the fact is that if Alexandria, Louisiana bought this package, readyprint package from us, in our total margin we had enough in this instance, to give us a fair price for the comics if we added \$2.00 per comic. If he bought them separately, then we wanted more than \$2.00 per comic because we are getting it here, and the market in Alexandria,

2044 Louisiana, should be more than \$2.00 per comic. Now if he wanted to go to another printer and buy a section he was free, he could have all the NEA comics he wanted at fair price.

Q. You told Mr. Minton in the next to last paragraph: "On basic cost on this section is \$10.16 per thousand." Did you mean that was the price you had to pay Greater Buffalo?

A. Where was that?

Q. The next to last paragraph.

A. Page two?

Q. No, page one.

A. The basic cost of this section was \$10.16 per thousand.

Q. Does that mean that was the price you had to pay Greater Buffalo Press?

A. That was the price we paid Greater Buffalo Press.

Q. All right. That is whether he took the comics or not, is that correct? I will withdraw that.

A. If it was a readyprint run the price was \$10.16. We couldn't buy the section with all the makeready for \$10.16. We already paid for the makeready.

Q. The second sentence says: "The page change at \$10.00 adds another forty cents per thousand on the basis of a 25,000 run." Does that mean that the Alexandria, Louisiana

2045 Town Talk wanted the makeready that you had but he wanted to make a change for a 25,000 run and that change would add another forty cents a thousand that you would have to pay Greater Buffalo?

A. That is correct.

Q. You say: "This makes our total printing cost F.O.B. Buffalo \$10.56 per thousand. I believe this is a very good printing cost, and should give you some maneuvering room. The minimum should be \$12.65 per thousand, including the one page change."?

A. Right.

Q. You were saying that the minimum profit you wanted to make was the difference between \$10.56 and \$12.65, is that correct?

A. Yes.

Q. You say—

A. I had some previous makeready to absorb, but I will go along with that.

Q. You say: "This would give us a margin of \$2.00 per thousand, or \$52.25 on the run of 25,000. You might come to this for the printing rate, and then add around \$2.00 per thousand for NEA comics in the section, if we do the printing. You would want to keep your guard up on offering NEA comics this cheap, aside from the printing deal, so you don't get boxed into selling NEA comics at \$2.00 if the printing goes elsewhere."

2946 A. I think I explained that adequately.

Q. Yes.

A. Did I make it clear?

Q. Yes, thank you. Now, was it customary to compute the quotations to the various newspapers much along these same lines?

A. This, where I told him about the \$2.00 per comic, was not customary. The computation that you had before you came here, that is about the way we did it, figured the printing cost, the sales cost, what we have invested in the way of other expenses, and come up with what we think will keep us in business.

Q. You determine a profit you want to make on that particular run, is that correct?

A. Sure.

Q. You set a goal as to what profit you want to receive from that newspaper?

A. This sounds like we were handing something to the publisher, we have made a goal, he should live with it. This isn't the way business is done.

Q. How is it done?

A. It is competitive.

Q. How do you do it?

A. In case of a readyprinted section we go to the newspaper and we say, 'Look, we can do some engineering for you on this section, save you money on a make-ready price, give you an economically priced section. Now then, we have to determine what——'

Q. That is what you are telling the newspaper?

A. Yes.

Q. I am talking about what you do.

A. I would have to say this to get to the point. We have to get an agreement with him as to what comics he would like to

have in his section. Once we have some sort of agreement with him that that is what he would like to have, we go back and find out our printing cost on that section with makeready it will fit into.

Q. What do you do about pricing, arriving at the profit?

A. We try to sell it at whatever price we feel is a fair one, we could get for it. This is determined by the number of NEA comics in there, and by other competitive factors. Your publisher has to have a good deal otherwise he will buy a TV section or Showtime section for the weekend supplement. But the basic mechanics, I would say we figure out finally what the cost of this section is going to be, what the baggage rate would be,

the shipping rate, and then we say, "How much profit shall we have on the section?" We usually relate that back to a price per thousand for this particular comic section.

Q. How, if at all, do you take into account the value of the copyrighted feature, or don't you?

A. Sure, this is basically—yes, we take in the value of the copyrighted features, for the NEA copyrighted features. I make it clear we have no control over the other syndicates.

Q. I am talking about NEA features?

A. NEA features, yes.

Q. How do you take into account the value in determining your profit? You say, "I want to come out with so much profit. I will give them these features, I don't have to worry about how much I am getting for the features, all I am interested in is the profit."

A. No, because the artists are entitled to their share of what we make.

Q. How do you do that, how do you do that, how do you arrive at the price?

A. In our operation we pay, in the normal arrangement with the artist, we pay him 50% of sales after certain expenses are taken out, the matting and so forth. Now, in the case of ready-printed sections, we add—we divide whatever we have in the section by the number of comics, the profit we have in the section, by the number of NEA comics in there. Each comic artist gets his, basically, 50% share. In our operation, the profit is put on—for the benefit of the artist—the profit we make on selling a section is all put on the comics, so

we don't question if the comic artist—if we are paying them fairly. We have to pay them fairly because of the fierce competition for these people, they can go to other syndicates or go into illustrating work or—

Q. So then you are computing the profit only on the copy-righted features, you are treating the price that you have to pay Greater Buffalo as the price for the printing and you are earning the profit on the features that you share with the artist, you are also earning whatever payment Greater Buffalo Press makes to you for that account, is that correct?

A. On new business, yes.

Mr. BERNSTEIN: Now I offer P-144 in evidence.

Mr. STEVENS: No objection.

(Thereupon Plaintiff's Exhibit P-144, was received and marked in evidence.)

Mr. BERNSTEIN: I offer P-145 in evidence.

2950 Mr. STEVENS: No objection.

(Thereupon document referred to was marked Plaintiff's Exhibit P-145 and received in evidence.)

Mr. BERNSTEIN: I offer P-146 in evidence.

Mr. STEVENS: No objection.

(Thereupon document referred to was marked Plaintiff's Exhibit P-146 and received in evidence.)

By Mr. BERNSTEIN:

Q. Now, I ask you if you have had occasion to read P-144, P-145 and P-146 in evidence recently, Mr. Anderson?

A. Yes, I have read these.

Q. And—

Mr. STEVENS: I think you can eliminate one question; I am sure he has read these exhibits recently.

Mr. BERNSTEIN: Thank you.

By Mr. BERNSTEIN:

Q. These three exhibits refer to the Albuquerque Journal, is that correct?

A. That is correct.

2951 Q. The Albuquerque Journal—is this correct, did the Albuquerque Journal have a circulation of about 61,000?

A. Yes, that is correct.

Q. And Acme was doing the printing for that account at that time, December 1, 1956?

A. That is correct.

Q. And that King comics were being used in that paper, is that correct, in the readyprint that Acme was selling, is that correct?

A. I don't think—I don't know if it was a readyprint color comic supplement, I believe it says King comics were being used, yes.

Q. I invite your attention to the next to last paragraph in which you say: "At the present time, the twelve-page section is made up entirely of King comics——"?

A. That is right.

Q.—"And by the time you have picked 23 or 24 King comics, you have really gotten down to the bottom of the barrel. You may want to sweeten your offer with two or three NEA Sunday comics not having daily continuities." Is it a fact that the offer was made, that is, P-145, Mr. Minton made the offer to the Albuquerque Journal?

A. That is right.

2952 Q. And he did say on page 2 in the fifth from last paragraph: "As a further saving for you, we will include in the printing cost of both the ten and twelve-page sections, any or all of the NEA Sunday comics: Little People, Kevin the Bold and Tom Trick. These are all excellent comics and enjoy a wide distribution." Then he describes the features and then he says: "I sincerely believe that these would make valuable additions to your section. Proofs are enclosed." So that offer was made to the Albuquerque Journal. And then——

Mr. STEVENS: Is this a comment or what?

By Mr. BERNSTEIN:

Q. Is there anything else?

A. Yes, that offer was made to the Albuquerque Journal.

Mr. BERNSTEIN: I offer in evidence P-147 and P-148.

Mr. STEVENS: No objection to either.

(Thereupon documents referred to were marked Plaintiff's Exhibits P-147 and P-148 and received in evidence.)

2953 The COURT: Mr. Bernstein, that Albuquerque Journal offer, what do you contend is wrong with that under the law?

Mr. BERNSTEIN: Well, the point is that the feature, having a copyright, and the newspaper not being able to get it anywhere except from the copyright holder, once he develops a certain readership for that comic, why then he has such a demand for

that comic he wants to continue it. If he wants to solicit another printer—

The COURT: You mean he needs the comic, he's got to have it, and then you say NEA was beating him over the head with the printing, "You can't have it unless you have that too"?

Mr. BERNSTEIN: That is right.

The COURT: They say, "You can have it at a price if you —"

Mr. BERNSTEIN: They are relating the price to the printing.

The COURT: They didn't force the printing with them, they said, "If you give us the package, you can have this price." You contend that isn't so?

2954 Mr. BERNSTEIN: I did not express myself clearly. I would say this; that the legal effect of the tie-in runs the gamut. At one extreme there is the situation that Mr. Koessler described that King was doing to him; he said, "If they do the printing with you I won't give them the features, if I do give them the features I will raise their price so much and jack it up, hit them over the head, and if you want peace you better give me so much per week." That is the one extreme. The other extreme or the other side of the coin is where the printing and the features are sold together as a package, so that the newspaper is not in a position to buy the comic features at the same price that NEA is willing to take for the features unless he buys the printing, and since he can't buy it from anybody else, NEA has the copyright to it, and since he has developed a
2955 readership interest for it, if he wants to seek to get the printing done somewhere else, he doesn't have the opportunity to do it because the price that newspaper is paying is included within the printing price. It is true that NEA is not refusing to sell him the features, he is going to be able to get them, but the price is going to be higher.

The COURT: Now, you have stated a lot of ifs to bring that picture into focus.

Mr. BERNSTEIN: All of the facts are in evidence from this witness' testimony.

The COURT: I don't want to go into that. I want you, sometime, to point those facts out.

Mr. STEVENS: If I could make one comment, your Honor. It seems to me that instead of having a conjectural theorization of the wrongs which may flow from this, if Mr. Bernstein feels

somebody was hurt, this is the kind of thing that ought to come out of a man who has been hurt, not a speculative argument.

The COURT: Well, I wanted to find out flatly what you contend was wrong, because I thought maybe there was some formula than I considered it to be, and you say, assuming you have proven a number of facts, the ifs have been proven, that flows. I don't need further discussion.

Mr. BERNSTEIN: Thank you. Now, this phase of the case will take a little while. Would you like to recess now and give Mr. Stevens the opportunity to confer with Mr. Anderson?

The COURT: Are those all the exhibits you expect to show Mr. Anderson?

Mr. BERNSTEIN: No.

The COURT: Give them all to him.

Mr. BERNSTEIN: They have a copy of these.

The COURT: You have told them——

Mr. BERNSTEIN: I have told them which exhibits, he has read them, and there will be a few more. This area that I am going into will take some time for development.

The COURT: All right. I suppose you would like a break. We will do that. Two o'clock.

(Thereupon the Court was in recess at 1:00 p.m.)

2958 (Proceedings resumed, pursuant to recess, commencing at 2:00 p.m.)

EARL ANDERSON, having been previously duly sworn, resumed and testified further as follows:

DIRECT EXAMINATION

By Mr. BERNSTEIN (Continued):

Q. Mr. Anderson, before proceeding to another subject let me see if we can't clarify one point about the sale of your readyprint. With respect to N-5, the comic section printed for the Suffolk News Herald, this is a readyprint sold to a lot of newspapers with small circulations, except for the masthead change?

A. That is right.

Q. Let's take the Suffolk News Herald. Does that newspaper have any exclusive right in an area around Suffolk?

A. I don't know if the contract covers that.

Q. Let's talk about general business practice with respect to your sales of readyprint. Is it customary to give a particular

newspaper that you sell the readyprint to some protection as to exclusivity in his area, that is, not giving the readyprint to another newspaper in the same area?

2959 Mr. STEVENS: I object to that.

The COURT: Overruled.

The WITNESS: Yes. It is customary in selling features that they get the territory—Suffolk wouldn't want another paper to have the same features that they are selling, naturally. They can go and buy additional printing if they want, they can get another section, if they like.

By Mr. BERNSTEIN:

Q. From NEA?

A. Sure. In this instance we don't have the comics for another section. They can get comics from another syndicate.

Q. When you have the makeready made up, you are selling them to a number of papers under the same makeready charge, you are doing this as to newspapers that are not in the same area?

A. In the same city or same area, yes.

Q. Not in the same city?

A. No, we wouldn't sell the comics in the same city. If we had other comics available we would sell them.

2960 Q. Now, inviting your attention to another subject.

P-147 and P-148 in evidence, these documents relate to the Southeastern Color Comic Group among other things, do they not?

A. That is right.

Q. Now, is this correct; that the Southeastern Comic Group was a group of small newspapers in the southeastern United States that had a circulation of about 25,000 more or less, is that correct?

A. Each newspaper—I think that would be the larger end of the sale for each newspaper.

Q. Some of them went down as low as what?

A. 10,000, 20,000.

Q. And do you know when that group was organized?

A. I would like to give you the background on this, if I might. I participated in it.

Q. Excuse me—

A. May I do this?

Q. Excuse me. I will give you the opportunity for the background but first I would like to get some background facts out

of the way before going into the details. Do you know when, approximately when, the Southeastern Group was organized and how long it is in existence?

A. It was organized, I would say, in the late forties or 1961 early fifties.

Q. And ultimately there came a time when NEA sold them copyrighted features, is that correct?

A. That is what I would like to tell. Yes, NEA did sell them—

Q. Approximately what time was that? What period was that?

A. NEA sold them at the time the group was organized and formed. We participated in the formation of this group. These papers had an advertising man come to them and suggest it would be good for these papers to get together as a group and sell national advertising, instead of having 10,000, 20,000 individual circulation they would have a total circulation of 200,000 or something like this, to offer to national advertisers, to sell in a group.

Q. And that national advertising was included in the comic color supplements?

A. And the advertising they were able to sell was included in this one printing group. When they decided they wanted to form this group—these were papers, about ten of them—some of them had printing contracts for readyprint with King Features, some of them had printing contracts with NEA for readyprint. In getting together—we went down to help them—
 2962 these newspapers found that they had a problem in getting started because they had two suppliers for their printing. If they were going to have one group they wanted to put it in one plant, have one makeready, so that the sections would be the same for all papers. NEA held the printing contracts for about half of the papers and King Features held the contracts for about the other half. Somebody had to give in if they were going to have a common printer. NEA—these papers were—most of them were service customers of ours, we were anxious to do what we could for them, we helped them form the group. We gave up the printing contracts we had in order to make this group successful. King Features refused to give up their printing contracts, so the only thing for the group to do if it was going to get going was to give all the printing contracts

to King, and King got the contracts for printing all of these newspapers.

Q. For how long a period did King have that contract, approximately?

A. Now, King held it for the duration of the contract they wrote at that time.

Q. When you say "at that time", you mean around 1948?

A. In that area.

Q. Somewhere—

2963 A. In that area. At the same time these newspapers had another problem, that was obtaining features to fill this eight-page section they proposed to start. They called in all—not all of the syndicates—I was down there, I recall the Chicago Tribune representative was there, the representative from United Features was there—

Q. Excuse me, are you concentrating your remarks now to the period of time before Atlantic Features was formed or after or both?

A. This was prior to the forming of Atlantic Features.

Q. Please limit your discussion to up until the time Atlantic Features was formed.

A. Up to the formation of Atlantic Features.

Q. Go ahead, please.

A. So these syndicates came down and we had meetings with them and decided which features they wanted. They asked for bids on the features they wanted. As a result of that, Chicago Tribune, I think, sold about three features, we sold eight. The pricing was all quite competitive. I think Chicago Tribune and United Features were in the twenty, twenty-five cent area. We had more comics than the rest, we sold at eighteen cents per thousand for the whole group. When the contract with

2964 King—King didn't sell their comics to the group. They sold, I believe, Blondie individually to each newspaper to get it into the section.

Q. Was the group an incorporated group? What was the name of the group?

A. This is an interesting thing. One of the founders—the newspapers were in this—one of the founders told me that this was formed as a non-profit organization. I don't understand how this could be, but this is what he told me. Whether it still is, I don't know.

Q. Do you know what the name is? What did you call it?

A. Southeastern Color Comic Group.

Q. Okay.

A. Now, then the printing went over to Newport News. They started printing for the whole group. Jack Hornady came to Southern Color Print. He formerly had been a salesman for King and he left and went to Southern Color Print. He got an exclusive printing contract with Southern Color Print—

Q. Excuse me—

A. He also became a sales agent for Hall Syndicate. Hall is one of our competitors, they have Sunday comics—

Q. Excuse me. Was Southern Color Print owned by a newspaper in Newport News?

A. Southern Color Print, yes, was owned by the Newport News News; this was Commander Bottom, and Bob Hall was the general manager.

Q. Did Bob Hall have any relationship to the Hall Syndicate?

A. Not that I ever heard of. Did I use the right name? Robert Smith, I am sorry.

Q. Robert Smith?

A. He was general manager.

Q. Of Newport News and also of Southern Color Print; and Southern Color Print was engaged in what business?

A. Southern Color Print was a printer.

Q. Of color comic supplements?

A. Yes.

Q. Anything else?

A. I don't know.

Q. This is prior to the time of Atlantic Features being formed. Southern Color Print was—strike that out. Initially, King had the contract with Southeastern Color Comic Group and the runs were being printed at International in Wilkes-Barre, is that correct?

A. I assume, yes.

Q. And Hornady was an employee of King, is that correct?

A. Yes, he was. He was a right hand man to Mr. Nicht.

Q. In December of 1955—does that conform with your 2966 recollection—he left King and went down into Newport News area?

A. I can't say it was 1955. It would be in that area.

Q. And was it at that time that Southern Color Printing began doing the printing for Southeastern Color Group?

A. I am not quite clear on that.

Q. In any event, there was a period of time—was NEA selling features to the Southeastern Color Comic Group while King had the contract and was printing at International?

A. Yes, from the inception of the group. At that time we were selling eight NEA Sunday comics to the group.

Q. After King lost the contract what features were sold to the Southeastern Color Comic Group?

A. For the printing? After it lost the contract for the printing?

Q. That's right.

A. We continued—I am sure of this—up until the time of the arrival of Jack Hornady on the scene to sell eight NEA Sunday comics to the group.

Q. Did King continue to sell any color comics to that readyprint printed by the group?

A. I'm not sure. I think they continued to sell Blondie.

Q. What the Southeastern Color Comic Group was having printed at Southern Color was a readyprint that consisted of identical comics with identical advertising, so that the advertisers could be secured of a larger circulation than they would if they went to one paper?

A. That is correct.

Q. And all of these newspapers that comprised the Southeastern Color Comic Group were getting the benefit of the readyprint, the one single charge, is that correct?

A. Yes, that is why we helped them form the group.

Q. NEA made available to the Southeastern Color Comic Group eight comic features at a very special price?

A. I don't understand your point, "very special price." It was not—we sold ours at eighteen cents per thousand for a group of eight comics. As I recall, United Features sold three for around twenty cents per thousand. Chicago Tribune, I don't know what they came in at, about twenty-four cents a thousand. We were—considering the volume, we were in the range. This gave us one sale of 200,000 at least of these eight comics. Now, whether—this was a negotiated rate, I don't know it was what you would call a special rate.

Q. Now, did NEA also advise the Southeastern Color Comic Group that those same publication rights were available to any other newspapers that would become a member of the 2968 Southeastern Comic Group, at the same rate, providing NEA hadn't given those features to another newspaper in that particular area, is that correct?

A. If the territory was not sold out, yes.

Q. What do you mean?

A. If we had not sold the paper, a newspaper, and they had the territory, the right to this comic for this territory.

Q. If a newspaper wanted to join the Southeastern Color Comic Group and it was printing in an area where NEA comic features had not been sold to another newspaper, then Southeastern—then the publication rights to NEA features would be available to that member on the same basis it was to the others?

A. We told Jack Hornady he could not sell our comics.

Q. We are not talking about Hornady, we are talking about before Atlantic Features was formed. Is this correct; that NEA made available to the Southeastern Color Comic Group the right to give any other newspaper that wanted to join that group the opportunity to obtain NEA publication features at the same eighteen cents per thousand, as long as there wasn't another newspaper in that area that already had the same features? That NEA had given them some exclusivity?

2969 A. Would you repeat the question?

Mr. BERNSTEIN: Would you read the question, please?

(Thereupon the last question was read by reporter.)

By Mr. BERNSTEIN:

Q. I will make the question shorter.

A. The contract provided that any additional papers that would be added, would be added at this eighteen cents per thousand.

Q. We are getting down to the period when Atlantic Features was formed, and my representation is that it was formed in an about December of 1955. Do you know whether that is—

A. That must be right. Mr. Hornady was president.

Q. Do you know whether Atlantic Features was formed by certain members of this Southeastern Group?

A. No, my understanding is that Atlantic Features was Jack Hornady's selling arm for Southern Color Print.

Q. You don't know whether the fact is——

A. I don't know if the papers had money in it or not.

Q. You don't know whether the fact is——

A. I know that he was the president of it, that is what I know.

2970 Q. Look at the last paragraph of P-147. You say: "Hornady and Bob Smith set up Atlantic Features while Hornady was still traveling for King. Southern Publishers put up from \$20,000 each, down, as token payments under an agreement which gives them an option to buy the Southern Color Print plant." Does that refresh your recollection?

A. I am afraid I have misled you with this report. Hornady and Bob Smith set up Atlantic Features while Hornady was traveling for King. This I agree with. I say: "Southern Publishers put up from \$20,000 each——", I didn't, I shouldn't have said put it in Atlantic Features. The report should have said they put it into the plant, into the Southern Color Print plant.

Q. Atlantic Features then became the exclusive sales agent for Southern Color Print, is that correct?

A. Yes, and for Hall Syndicate.

Q. For Hall Syndicate?

A. Yes, sir, in the south.

Q. Now, Atlantic Features bought publication rights from NEA, is that correct?

A. Southern Color Print—the Southeastern Color Group bought the features. Our contract was with the Southeastern Comic Group. Hornady tried to carry these over to Atlantic Features and we said no.

2971 Q. Did you ever sell Atlantic Features any publication rights so that Atlantic Features could offer a ready-print that would include NEA features, possibly Hall Syndicate features or something else; did you ever do that?

A. I think a few comics were sold to Atlantic Features.

Q. Do you know whether or not United Features Syndicate also sold Atlantic Features some feature rights when it was first formed?

A. When it was first formed? You may be interested to know that today Mr. Hornady—he was the southern agent for Hall, now he is the southern agent for United Features Syndicate, for one of our big competitors, the McNaught Syndicate, and

for Adcock. Those three syndicates have more Sunday comics than NEA does.

Q. How about Chicago Tribune Syndicate, did he also obtain feature rights from Chicago Tribune Syndicate, Atlantic Features?

A. He is not the sales agent for the Chicago Tribune. Whether he bought some—I don't know whether he bought for the Southeastern Color Comic Group through Atlantic or direct from Chicago Tribune. I believe there is still some Chicago Tribune features in that section.

2972 Q. Now, I want to make sure that I have your answer clearly. You testified today that Mr. Hornady is exclusive sales agent for United Features Syndicate, McNaught Syndicate and Hall Syndicate?

A. I went to the last issue of Editor and Publisher, the trade magazine and I find Atlantic, Mr. Hornady as president, is listed as the southern representative for McNaught, for United Features and for Adcock Associates.

Q. Exclusive representative or do they have other representatives?

A. This I don't know.

Q. All right. Do you know—this is my next question, a different question—do you know whether or not United Features Syndicate sold publication rights to Atlantic Features at about the time Atlantic Features was formed?

A. No, I don't know. I know——

Q. That's all right.

A. Let me say this——

Q. That's all right.

A. I'm sorry.

Q. There are many, many facts that I'm trying to get out, I am not debating, but they have to be in the record to the extent that you know about them. McNaught Syndicate,

2973 do you know—yes or no—do you know whether McNaught Syndicate sold publication rights to Atlantic Features shortly after it was formed?

A. No.

Q. Do you know whether Hall Syndicate sold feature rights to Atlantic Features?

A. No.

Q. Now, this is very important, we are getting down to the details of your relationship with Atlantic Features. Do you

recall that in April of 1956 you had a conference in the Waldorf Astoria Hotel—that is not in those documents, you will have to search your recollection for this—in April 1956 there was a conference in the Waldorf Astoria Hotel between you and Mr. Hornady and Robert Smith, at which time Atlantic Features requested from you the right to publish, to purchase publication rights for newspapers whom they would sell supplements to?

A. No. The date coincides, I believe, with the annual meeting of the American Newspaper Publishing Association but——

Q. Was that at the Waldorf?

A. Yes. I don't recall this meeting.

Q. Do you recall at about that time you agreed to provide them the rights as long as they were not already taken
2974 in that particular town?

A. I don't recall that at this meeting. You've got to look at the——

Q. Do you recall in October of 1956 you, with Mr. Borglund, took a trip down to Newport News—that isn't in the documents either, I am trying to get your independent recollection—you took a trip with Borglund to Newport News, you went to Robert Smith and Hornady, and at that meeting you asked Mr. Hornady to stop soliciting the sale of newspaper supplements to papers that were then being printed by NEA?

A. We were—what was the date of this?

A. October 1956 in Newport News.

A. I recall being—going down with Mr. Borglund. We were trying to suggest to him, I think, that this advertising group we set up was very helpful to these papers in the southeast and we could be more helpful to them if he would allow us, in the sections we printed, to include this advertising, and this is probably at this time, I would suppose, and told him that we would insert this advertising in any sections that we printed at no mechanical charge to the publisher, this would be open to everybody. At this meeting or another, I don't remember,

Mr. Hornady told me that he was interested in printing,
2975 not in the advertising, the papers could not have his advertising unless they bought his printing.

Q. Now——

A. If it was this meeting, I don't know.

Q. Search your recollection now. I am talking about the time that you and Mr. Borglund flew to Newport News. Do you recall telling Mr.—this isn't in the documents——

A. I was trying to get the date.

Q. This document, this report, is October 22, 1956.

A. Yes.

Q. So it is somewhere around that same time?

A. Right.

Q. Do you recall that you told Mr. Hornady, possibly Mr. Smith together, that you had an arrangement with Greater Buffalo, since they had purchased the plant, that depended on your volume, and the diminution of any volume you had printed in Greater Buffalo reduced—or raised the price, that is why you were anxious to keep up your volume, and so that you asked them to cooperate by not soliciting the sale of supplement printing from newspapers that NEA was then servicing, do you recall that?

A. No, I have no recollection of that.

Q. Do you recall anything like this; that Mr. Smith 2976 or Mr. Hornady said something to you that "Gimbel's doesn't agree not to sell Macy's customers", do you recall any conversation like that?

A. No, I don't.

Q. Now, do you recall that you had told Mr. Hornady that NEA had voluntarily refrained from soliciting printing from any member of the Southeastern Group, and that Hornady told you that you are free to do so, do you recall anything like that?

A. I don't know whether it was this meeting or not. At some meeting we pointed out these publishers were all good friends of NEA, that we were still trying to make this group successful, we were not trying to break it up by taking the printing. I probably told him that.

Q. Did you tell Mr. Hornady that Atlantic Features could sell the readyprint that was available to the Southeastern Group to individual members of the group but that he could not offer that to any newspapers that was then being printed by NEA; as far as those accounts, that newspaper would have to come to NEA, do you recall that?

A. I don't recall those words at all. I will put it in the context of what I saw down there——

Q. Excuse me——

2977 A. —If you look at the situation—

Q. Excuse me. I would like to get your recollection.

A. I am trying to give you my recollection.

Q. Before you begin, Mr. Anderson, I would like you to, please, in giving your recollection to the best of your ability, relate to us when it was and where it was, and whether there were other meetings before or after?

A. To the best of my recollection, there was this meeting you speak about and the one covering this report. It melds together in my mind. Apparently we were down there another time, twice.

Q. You recall how many meetings? Do you recall a meeting referred to in P-147?

A. The one I wrote the report of, yes.

Q. Where was that meeting?

A. This—I think this is my report of the meeting that you referred to.

Q. Where was that?

A. In Newport News.

Q. Who went to that meeting with you?

A. Mr. Borglund and I.

Q. Anyone else?

A. No.

Q. With whom did you meet?

2978 A. Mr. Hornady and Bob Smith and, I believe, Commander Bottom may have come in, probably, in the session.

Q. Where was the meeting?

A. In Mr. Smith's office at the Newport News News, the newspaper.

Q. Tell us, to the best of your recollection, what was said at that meeting, by whom, to whom, and so forth, to the best of your recollection?

A. This is the meeting covered in my report here?

Q. Yes.

A. We told Mr. Hornady that we would like to see the advertising setup that he had for putting national advertising into these newspapers made generally available to all the newspapers in the area and, in order to do so, we offered to put these ads into the papers we printed at no additional mechanical charge to the newspapers. Therefore, he would have a longer run on the section. Mr. Hornady—I don't know his exact

words—what he told us was that he was interested in the printing and not in the advertising setup only so far as if sold printing for him. If they didn't use his printing, they couldn't be in his group for advertising purposes. We discussed the fact that we had not tried to break up the Southeastern Color Comic

Group by fractionizing the printing. We hadn't tried to
 2979 go to the individual papers to get the printing contracts from them. We were still trying to cooperate with this group. I think about that time, too—I am sure at this time—I had in mind that in the southeast King Features had most of the printing. We had a few runs, King Features had more of the printing, and I think I told Jack Hornady, "If you can get the King runs, good, get them, we'll help you any way we can." I don't believe I told him that I would extend these comic contracts for him in each individual case. But any new runs he could get from King, we were still on his side, as opposed to King.

Q. What, if anything—let's look at your report, P-147, and you say: "We made the following proposals: (1) That NEA will continue to allow Hornady to quote our comics in making printing offerings to newspapers at the same rate we are now getting from the Southeastern Group." Does that refresh your recollection that prior to October of 1956, prior to this meeting and earlier, you had a previous discussion with Hornady of Atlantic Features and had at that meeting stated you would allow Hornady to quote comics in making printing offerings to newspapers at the same rate you were getting from the Southeastern Group?

A. It doesn't refresh my recollection. I am talking
 2980 here about continuing the practice. I would have no recollection of that meeting you referred to at the Waldorf.

Q. You don't have a recollection of a meeting at the Waldorf with Hornady concerning—Atlantic Features was formed, Atlantic got new members for the Southeastern Group, trying to get new advertisers for them—at that meeting you told him that he could offer the comics at the same price as had been offered to the Southeastern Group?

A. I don't recall this at the Waldorf Astoria or any other meeting.

Q. Do you recall any meeting with Hornady on this subject prior to October of 1956 about which there is this report?

A. No, I don't recall any meeting I had with him.

Q. Do you recall—

A. I have run into him. I don't know, I don't recall any meeting. I don't recall any meeting.

Q. Let's approach it this way. When you went down to Newport News to discuss this, had you already been doing business with Atlantic Features?

A. Yes, we had sold a few features through Atlantic Features.

Q. How did that come about?

A. How? We were already selling features to the Southeastern Color Comic Group, and Jack informally extended the agreement we had with the Southeastern

Color Comic Group to cover Atlantic Features. We may have had a contract, anyway the same arrangement prevailed.

Q. He couldn't have done that without conversation with you?

A. No, this was agreed to, we talked to him on the phone back and forth on each one, on these agreements. I don't mean to imply we hadn't.

Q. Do you recall when he formed Atlantic Features and was getting started on this, you had a personal meeting with him at which you outlined what—

A. No, I don't.

Q. You don't recall. All right. In paragraph 2 you say: "That these quotations on our comics will not be used, for any of our present clients. (3) That present NEA clients will be advised that they can become members of the Southeastern Color Comics Group, if they wish, for advertising representation only, and that the printing can remain with NEA, with Greater Buffalo Press inserting the ads at no cost."

A. Yes, we made that proposal. This is the one he said no.

Q. You say: "We did not get agreement on these proposals. Smith and Hornady made it plain that their primary interest is in obtaining more printing for Southern Color Print, and that they were much less concerned in adding members to the Southeastern Group for advertising purposes only. It became evident that they want to use the advantage of the advertising setup in order to get more runs into Southern Color Print. When we pointed out that we had not been soliciting printing directly from members of the group because we wanted to make the group successful, both of the men said that they were quite surprised we had not done so, and

that we were perfectly free to solicit that business. Since no reasonable method of working together to the advantage of the newspaper publishers represented in the group seemed to be possible at this meeting, we withdrew the privilege of quoting on NEA comics in points where we are already doing the printing." That last paragraph that I read, when you say, "We withdrew the privilege," that would imply that earlier you had had some conversation with Hornady and given him the privilege of quoting NEA comics in points?

A. Yes. No quarrel about it.

Q. You do not have a present recollection of where or how it was done?

2983 A. There were two or three small papers he actually—we made the rights available to him.

Q. Now, the fact remains that after October 22, 1956, you did continue to make available to Atlantic Features publication rights for newspapers that were not being printed by NEA, is that correct?

A. Not generally. We allowed him to have the features in some cases, yes. He no longer represents us, he can't represent us. If he wants to come in in a special situation——

Q. All right——

A. I am trying to make it clear.

Q. I will give you that opportunity. I am talking about after October 22, 1956. Let's take the period for a year or two thereafter, just that short period thereafter. You did continue to make available to Atlantic Features publication rights for newspapers if NEA was not printing for those newspapers, is that correct?

A. I have said we did. At least with the small papers we made them available, yes.

Q. But for newspapers that NEA was then printing for, if Southern Color Print or if Atlantic Features solicited that account then that newspaper would have to come to NEA for the publication rights, is that correct?

A. Yes. Yes, that is right.

2984 Q. All right.

A. He was not our agent.

Q. Now, P-148 in evidence is dated January 9, 1958, and that is your letter to Mr. Brandon, secretary of the Southeastern Color Comics Group, and is it the fact that you then extended to the Southeastern Group the same arrangement that

you did before of eighteen cents a thousand for the comics, is that correct?

A. By this time I think we were down to seven comics.

Q. In the second paragraph you say: "In spite of some rather heavy increases in costs during the past two years, we are willing to go along on the same basis as heretofore at the rate of eighteen cents per thousand per comic, on a group of seven comics, with a minimum rate for each newspaper of \$2.88 per thousand." I see, there was the same eighteen cents, there was seven instead of eight comics, is that right?

A. That is right.

Q. Now then, you say in the second paragraph, after that: "These comics can be used as a unit whenever you add new members to the Southeastern Color Comic Group, providing that we do not have previous contractual commitments covering the territory, or that we are not already serving the newspaper with a color comic section." So that meant if you 2085 were already printing for the prospective new member then Southeastern Color Comic Group could not offer them the rate of eighteen cents a thousand?

A. We put their advertising in our sections, they could not carry it over in the comic agreement. Hornady wouldn't put the advertising in these things unless he got the printing.

Mr. BERNSTEIN: I offer P-149 in evidence, your Honor.

Mr. STEVENS: No objection.

(Thereupon document referred to was marked Plaintiff's Exhibit P-149 and received in evidence.)

Mr. BERNSTEIN: I offer P-150 in evidence.

Mr. STEVENS: No objection.

(Thereupon document referred to was marked Plaintiff's Exhibit P-150 and received in evidence.)

Mr. BERNSTEIN: I offer P-151 in evidence.

Mr. STEVEN: No objection.

2086 (Thereupon document referred to was marked Plaintiff's Exhibit P-151 and received in evidence.)

By Mr. BERNSTEIN:

Q. P-149, 150 and 151 referred to the Wenatchee, Washington Daily World, is that correct?

A. That is right.

Q. In 1958 the Daily World was using ten pages of comics. is that correct?

A. Ten pages of comics, two different sections.

Q. Six pages of NEA readyprint, four pages of King readyprint, is that correct?

A. I believe the four pages came from Acme Color. I will have to refresh my memory on that. No, you are right, you are correct.

Q. And the Wenatchee, Washington Daily World wanted to go to a smaller section, is that correct, at this time?

A. Yes.

Q. NEA offered a six page readyprint section and also offered to give them Intermediate Service at no extra charge, is that correct?

A. That is right.

Q. And they, the Wenatchee World, took the offer, is 2987 that correct?

A. Yes. We started printing the section for the Wenatchee World, or continued with the six page section for the Wenatchee World.

Q. And so you reduced the price of the readyprint to make it \$27.00 a week, is that right?

A. The cost of the Intermediate Service was \$27.00 per week.

Q. The cost to the Wenatchee World, is that correct?

A. Yes.

Q. But the cost—

A. We told them, "If you buy this, the readyprint section, we will reduce the price of the readyprint section so that you could have—start the Intermediate Service." They were not previous customers. It is a small paper out there, they don't use many features.

Q. Would you ordinarily have sold the Wenatchee Daily World the Intermediate Service, was their circulation big enough?

A. This was an exception, it was too big. However, it was the type of paper that carried few features, an exceptional type of paper, local and advertising.

Q. As far as the price, \$27.00 a week, your general offer of the Intermediate Service to a newspaper of a circulation 2988 that was big enough for it, what was the price of it?

A. We didn't have any. This was an exception. We don't have any price on the Intermediate Service for larger papers about 6,000. Our rate was at that time for Intermediate Service for papers of 6,000—I don't recall.

Q. More than \$27.00?

A. Less than \$27.00 a week. It would be in the range of \$12.00, \$16.00, \$18.00, in that area for a paper of 6,000. Wenatchee is a larger paper, they would command a higher price.

Q. Their circulation was 17,500?

A. That is right.

Q. What would you offer a paper of 17,500; Full Service?

A. Normally they would have the Full Service.

Q. Now, the last paragraph of P-149 reads as follows: "We may face some complications in this situation in the form of a separate bid for the printing submitted by Acme Color Print. Just by chance Cap Barnes, the Acme representative, arrived in Wenatchee thirty minutes before I did. He stumbled onto the fact they were going through a major comic section revision and immediately offered to bid on the printing. He did not do

this during the meeting but he later told me he had asked 2989 Jim Richter to send up a printing quotation on an eight-page standard section using six full pages of NEA comics. From what I know of Acme's printing rates, I can't imagine this bid being too competitive but it is a factor to consider. I questioned the propriety of Acme submitting this bid when they know full well they are making it against an NEA readyprint. They take the attitude that we are only interested in selling comics and don't care who gets the printing. I don't want them to know just how lucrative we consider the printing control." Now, underneath that last paragraph there are the initials E.H.A., are those yours?

A. Yes.

Q. There is some handwriting under that, "Any ideas on this one." Whose handwriting is that?

A. The initials are W.H.B. I would assume Mr. Borglund's.

Q. Was that to you or somebody else, that question, "Any ideas on this one"?

A. It is marked for H.W.W. and E.H.A., and the H.W.W. was Mr. Walker and the E.H.A. is myself.

Q. Do you recall whether you gave him any ideas on that?

A. I gave him no ideas

Mr. BERNSTEIN: I have no further questions of this 2990 witness. At this time, your Honor, I move to amend

Paragraph 28 of the complaint by substituting the word "Copyrighted" for the word "Comic" on the third line of the paragraph, to conform to the proof adduced from this witness.

The Court: Copyrighted instead of what?

Mr. BERNSTEIN: Comic. The word "Copyrighted" instead of the word "Comic." The allegation reads—the portion of the allegation reads as follows: "Beginning in or about 1954 or prior thereto, and continuing to the date of the filing of this complaint, defendant Hearst and NEA severally have sold and presently sell comic features to newspapers at discounts", etcetera. The amendment would say that "NEA severally has sold and presently sell copyrighted features to newspapers at discounts," etcetera. The basis for the motion is that the testimony of this witness was that he offered the reduced—
2991 offered to provide the Intermediate Service, a copyrighted service but not necessarily comics, as part of the unit price of the package deal, and the purpose of this amendment would be to make clear that the charge is tying in the printing of color comic supplements not only to the copyrighted features of comics but also to other copyrighted features of NEA.

Mr. STEVENS: I object to it. We have been talking about comic features, your Honor. That is what this case is about.

The COURT: Is there any bill of particulars here?

Mr. BERNSTEIN: No. If your Honor wishes to reserve decision on this, I would like an opportunity to argue this when we come to the final arguments.

The COURT: I would like to move along with the proof. Let's do it that way.

Mr. STEVENS: All right.

The COURT: I wish you would make note of that reservation.
2992

Mr. STEVENS: I think the fact of the matter is that in the Intermediate Service—perhaps Mr. Anderson could testify to this if he were asked—there isn't anything copyrighted except the comics.

The COURT: Is that so?

The WITNESS: That is right, yes, sir.

Mr. STEVENS: So it is a silly amendment.

The COURT: We will save that. I want to get on with the evidence, whatever it may be.

CROSS-EXAMINATION

By Mr. STEVENS:

Q. Mr. Anderson, did I understand you to say that Wenatchee, the newspaper there, had both a King readyprint and an NEA readyprint?

A. That is right.

Q. And that the decision of the paper in Wenatchee was to move to a single readyprint?

A. That is right.

Q. Was there competition for this new single readyprint run?

A. Yes, there was.

2993 Q. Who were your competitors?

A. Acme Color Printing.

Q. Was King also a competitor?

A. Yes.

Q. And what were you doing when you made available to the Wenatchee paper NEA's Intermediate Service along with the readyprint section which you quoted to it?

A. We certainly were not telling them they could not have the Intermediate Service unless they bought the printing. We were trying hard to make them want the Intermediate Service, to get a start with that newspaper on our daily service. It would also be advantageous to the paper, helpful to them, if the few comics that were in the Intermediate Service could be carried over into the Sunday section they had. They were dropping quite a few comics in order to make one section. They had two sections and were coming down to one. They were dropping quite a few Sunday comics. It seemed to us it would be helpful if some of the comics in the Sunday paper could be in the daily. That is why we made this exception and offered them the Intermediate Service.

Q. You spoke on your testimony, upon Mr. Bernstein's inquiry, that the Wenatchee paper was unusual in the number of features which it had. Will you enlarge upon
2994 that?

A. The Wenatchee paper, in spite of the fact it had about 17,000 circulation, carried very few features from outside sources. They were largely local news, some national news, very few of the comics and things like that that most papers of that size normally carried.

Q. What relation did that situation have to making an exception to your policy of providing papers of that size the Intermediate Service?

A. Our Full Service carried too many features for them to start using right away. The fewer features in the Intermediate Service would be more attractive than all the features. They were not a feature paper.

Q. Now, that is a readyprint run which NEA got?

A. That is right.

Q. You have already told us, I believe, that with reference to the Gary, Indiana Post Tribune, which is discussed in exhibit P-142, NEA did not get that run?

A. That is right.

Q. Did NEA get the run in Alexandria, Louisiana, which is discussed in P-143?

A. No.

Q. Did it get the run in Albuquerque, New Mexico, which is discussed in P-144, 145 and 146?

2995 A. No.

Q. Now, Mr. Bernstein said that he would give you an opportunity to describe at length NEA's relation to the Southeastern Color Comic Group. Will you tell us why—because I don't know that you were given that opportunity—you did not permit Mr. Hornady or his corporation, Atlantic Features, to sell NEA comics into the Southeastern Color Comic Group section?

A. We didn't allow Mr. Hornady to sell any more of our comics because he was already the representative from some of our competitive syndicates. Also our history shows we had eight comics when we started, today we have three. Our comics were not in good hands, as far as Mr. Hornady was concerned. He complains he don't have them, but he don't use them when he has them. They were continually offered to all the newspapers in this group individually and to Mr. Hornady for this group. All of NEA's eighteen comics, singly or in a group, any way he wanted them. The net result was, in spite of the fact he says he has to have NEA comics and is hurt by not having them, he don't buy them.

Q. Have you ever refused to sell NEA comics to—

A. We have never—Hornady can't point to a single instance in the southeast or anywhere where we have ever refused

2996 to sell any newspaper NEA comics at fair rates if they were not previously covered by the contract.

Q. Instead of being just a competitor representing one syndicate licensing Sunday color comics, Mr. Hornady now represents three syndicates?

A. That is right, more Sunday comics than NEA has.

Q. And you still do business with the Southeastern Color Comic Group?

A. Yes, we do.

Q. In exhibit P-149 Mr. Bernstein called your attention to Mr. Hanson's comment in the last paragraph, expressing his views upon Acme also quoting a section at Wenatchee?

A. That is right.

Q. Was there ever any restriction on Acme quoting a section where NEA had the business?

A. No, this is merely this salesman finding out he had more competition on hand. We never restricted Acme from making any quotations.

Q. A little more generally, Mr. Anderson, and this may be somewhat repetitious, how many feature organizations are there which license Sunday color comics?

A. I went through the Editor and Publisher Syndicate Directory, the last annual edition of it, and I found that there
2997 were eighteen syndicates listed there who offer Sunday comics. There may be more, but I found that many.

Q. How many such individual color comic features are there?

A. I counted 189 Sunday color comics available to publishers.

Q. Of course, exhibit N-6, the tabulation of NEA's Sunday color comics, shows that you have eighteen or twenty?

A. We now have twenty, that is right.

Q. Can Sunday color comics be grouped generally by the types of subject matter or interest to which they are addressed?

A. I think so. Generally you have the soap opera comics, the adventure comics, you have the family comics, you have the children's comics, the puzzles, things like that. Those probably are the general groupings.

Q. Does NEA have a comic which fits in each of those categories?

A. Yes, we try to cover those fields.

Q. Are there counterparts in each of those categories available from other feature agencies or organizations?

A. There are plenty of them available.

The COURT: What is the category on that Beetle thing?

The WITNESS: I would say—that would be Beetle
2098 Bailey?

The COURT: Yes.

The WITNESS: I would say that would be general interest, humor feature.

The COURT: Do you know what you have done to me in this lawsuit, you've got me back in the funny papers again. Last night I purposely looked and there was Beetle Bailey in the News, and it wasn't bad either. I think it was a cook with a great big cake and another—I don't know who the character is, a big fat fellow——

Mr. STEVENS: Sergeant Snorkel.

The COURT: The cook was saying, 'There is something, I am not sure about this cake.' It is a huge one. In the next picture the other fellow is saying—and there isn't a bit left—he says, 'Too much cinnamon.'

The WITNESS: Keep on being a fan, your Honor. We are losing a lot to television these days.

2099 By Mr. STEVENS:

Q. From your broad experience in the color comic supplement field, do you know of any comic which is so strong that a publisher would buy printing, which he might not otherwise want, to get it?

A. No, I don't know of any today.

Q. When NEA sells a color comic section to a newspaper, has it ever said to that paper or its publisher, 'You can't buy another one from anybody else'?

A. No, we have not.

Q. Has NEA ever sold and does it presently sell comic features to newspapers at discounts, rebates or reduced prices on agreement or understanding that such newspapers shall not purchase or deal in color comic printing services offered for sale or sold by any competitor or competitors?

A. No.

Mr. STEVENS: I have no further questions.

REDIRECT EXAMINATION

By Mr. BERNSTEIN:

Q. To clarify one thing; in October 1956, when you had this meeting with Mr. Hornady, was he then a representative for any syndicate other than the Hall syndicate?

A. I don't know.

Q. Inviting your attention to N-2, your Intermediate Service; which of the features on that exhibit are copyrighted, outside of the ones under comic pages?

A. To the best of my knowledge right now, I don't see any copyrighted features there. I am willing to have it checked. I don't see any there.

Q. You are not certain?

A. That is right.

Mr. BERNSTEIN: No further questions.

Mr. STEVENS: I may state, on that, we will check it and advise Mr. Bernstein, if that is a matter of importance to him.

The COURT: All right. I guess that is all.

The WITNESS: Thank you.

(Witness excused.)

3001 VERNON J. GAMBLE, called as a witness in behalf of the Plaintiff, and being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. BERNSTEIN:

Q. Mr. Gamble, would you please state your name, business address, name of the organization with which you are associated, and the capacity in which you are associated?

A. Vernon J. Gamble, Newspaper Enterprise Association, 100 West Third Street, Cleveland, Ohio. I am the sales director.

Q. How long have you held that position?

A. About three or four years.

Q. Prior to that—how long have you been with NEA?

A. Twenty-seven years.

Q. And prior to your present position—

A. I was the assistant sales manager for about ten years. I was the promotion manager before that and the managing editor, with a term in between for Army Service.

Mr. BERNSTEIN: I offer in evidence P-152.

Mr. STEVENS: No objection.

(Thereupon document referred to was marked Plaintiff's Exhibit P-152 and received in evidence.)

3002 Mr. BERNSTEIN: I offer in evidence P-153.

Mr. STEVENS: No objection.

(Thereupon document referred to was marked Plaintiff's Exhibit P-153 and received in evidence.)

Mr. BERNSTEIN: I offer in evidence P-154.

Mr. STEVENS: No objection.

(Thereupon document referred to was marked Plaintiff Exhibit P-154 and received in evidence.)

By Mr. BERNSTEIN:

Q. Mr. Gamble, P-152 in evidence is a memorandum that you wrote on March 28, 1957, to Mr. Hanson. Have you had the opportunity to read this memorandum recently?

A. Yes.

Q. Have you also—

Mr. STEVENS: He read all of 'them.

By Mr. BERNSTEIN: All right.

3003 By Mr. BERNSTEIN:

Q. Now, the memorandum, P-152 refers to the Bend Bulletin, what was that?

A. Bend is a city in central Oregon and the Bend Bulletin was their local newspaper at that time.

Q. What was the occasion of your writing to Mr. Hanson?

A. We had received a cancellation from the Bend Bulletin on the Full Service, which we provided to them. They had this for a few years, and prior to that they had the Intermediate Service. They tried the Full Service and apparently the quantity of the features in that Full Service—this is the daily feature service—proved too much for the space they had. They ran a four, six-page paper each day, and didn't have the opportunity to make full use of the service. Therefore, they cancelled with the idea they would like to drop back to the Intermediate Service.

Q. Did they have a readyprint contract at the time?

A. No, they didn't have a weekend or Sunday paper which required color comics. But somewhere in the line of Mr. Hanson's following up on the Intermediate cancellation, he developed or found out that they were interested in the possible use of a color comic section, either as a Saturday weekend
2004 edition or a Sunday edition that they proposed to establish.

Q. He wrote this memorandum in March of 1957, and they proposed to establish the section that would use the readyprint in the fall?

A. Yes.

Q. And you authorized him to offer to continue two comic features. OBH and Bunny, at no extra charge contingent on the readyprint contract?

A. That is if they were to take on the readyprint service and the Intermediate Service at a considerable, sizable investment over what they had been paying, we felt that we could accommodate them by giving them two features they requested from the Full Service to continue with the Intermediate Service.

Q. I show you P-153, another memorandum from you to Mr. Hanson, with respect to the same paper. That was prepared in November of 1957. What was the fact then with respect to the readyprint situation?

A. The readyprint did not develop. They apparently did not go ahead with their plans to establish the Sunday paper, and we had for several months at that time been supplying the two features from the Full Service with the Intermediate Service, and felt that, as had been explained to the publisher at the outset, if they didn't go ahead with the readyprint 3005 we felt there should be some fair compensation made for the two features from the Full Service.

Q. You suggested an additional charge of \$5.00 to cover those two additional comics, is that correct?

A. Yes. I might explain that this was sort of an exception to our normal practice. We either sell one service or the other. Here we are under both a cancellation situation, which required some extra negotiation by our salesman, also we faced a competitive situation in that if they went through with the cancellation, they would buy their features from somebody else.

Q. Who did the printing?

A. There was no printing done.

Q. Who did the readyprint?

A. This was a proposal to start a readyprint if they established the Sunday paper.

Q. They had been using OBH?

A. These were daily comics. OBH is Major Hoople, Our Boarding House and Bugs Bunny.

Q. They had been using the daily comics free of charge on the condition they would buy the readyprint from you in the fall; when the readyprint deal fell through you commenced charging them \$5.00 for the daily features?

3006 A. They had been using these daily feature comics for quite a number of years as clients for the Full Service, and when they reduced to the Intermediate Service they requested we continue those two comics. At the time they made the request they were in negotiation on readyprint, which would have cost them, as the figures show, about \$50.00 more a week of total investment for the printing, comic rights, and everything else. At that time we didn't want to add another \$5.00 onto their expense, but since they were continuing only with the Intermediate Service, which carried a rate of eighteen-ninety, we felt we were justified in asking them, as we had forecast to them, they didn't have to continue these two features——

Q. When they cancelled the full contract, they got the Intermediate Service for——

A. For eighteen-ninety.

Q. And that included OBH and Bunny?

A. It did not include those two comics, because the continuation of those was a matter of negotiation during Mr. Hanson's call on them, during the period of the cancellation. The cancellation was probably a year's notice, so there was a time of negotiation during which these two comics were arranged for.

Q. There was no interruption in the printing of the 3007 daily comics?

A. No.

Q. They were paying for them under the full contract?

A. They continued with the full contract until the expiration, which probably would have been coincident with the starting of the readyprint.

Q. When the effective date of the cancellation came in, and the readyprint fell through, they paid you twenty-three ninety?

A. That is right.

Q. I show you P-154 in evidence. This refers to the——

The COURT: I don't see anything in that last batch. What can you tell me about that that you think is odious?

Mr. BERNSTEIN: This is evidence of the fact that a newspaper buying NEA's printing is able to obtain copyrighted features or some features, black and white, or daily features, that a newspaper who is not buying their printing, getting their printing from somebody else, is not able to get.

The COURT: That is the same kind of deal that I talked to Mr. Anderson about in the south?

3008 Mr. BERNSTEIN: It is additional evidence—these exhibits are representative of the various types of ways in which NEA is able to tie to the printing of color comic supplements the copyrighted features.

The COURT: Do you mean it creates a situation that is susceptible of this, you think you have the proof?

Mr. BERNSTEIN: Not only susceptible—

The COURT: You mean it has to be?

Mr. BERNSTEIN: Yes, sir.

The COURT: You say that kind of arrangement, per se, was a violation?

Mr. BERNSTEIN: That is correct.

By Mr. BERNSTEIN:

Q. P-154 evidences that in 1954, in connection with the Ponca City Oklahoma News, Mr. Minton, your salesman, offered them a readyprint deal in which he offered—what is that?

A. Alley Oop.

Q. For no extra charge, is that correct?

3009 A. He uses salesman's jargon, "I threw in Oop." This covers quite a bit of background and negotiations which was the result of the Ponca City paper receiving a readyprint arrangement from NEA. Alley Oop happened to be one of the comics in the readyprint going to several papers. It was an economy to the paper if we gave them Alley Oop, rather than to charge them for a comic, or if they were to purchase a comic from some other source and place it in there, because then they would have an additional \$10.00 charge in connection with the printing, which the printer would charge us and we, of course, would charge the paper for making the change. This adding, putting Alley Oop, in the section, was at the option of the client, and it was an accommodation to him to save him money in the overall total purchase of the section. For us it was no extra expense, it was on the presses, no new masts or makeready was involved.

Q. Was it customary to offer features at no charge in order to obtain a readyprint contract?

A. I would say not a multiple number of features. One feature of this type apparently seemed justified in this case. We already had two of them we were selling at the \$5.00 price, a

fair rate to Ponca City. We were again in a competitive situation; King was bidding on the run. Apparently, in dealing there, Mr. Minton felt he had to make some concession to the publisher to enable the publisher to hold his price in line. He was paying quite a bit for the section, he had a very unusual section, which required, as pointed up higher in the report, an additional \$20.00 for changing pages from the basic readyprint makeready, and for a paper of the size of this, 10,000, 12,000, this is a higher rate than if the paper had 50,000 and could have spread the extra cost over a greater number of sections.

Q. Was Alley Oop a desirable feature?

A. One of the better features. I couldn't say it was an influence on the publisher, one way or the other.

Mr. BERNSTEIN: I have no further questions, your Honor.

CROSS-EXAMINATION

By Mr. STEVENS:

Q. Mr. Gamble, you have some knowledge of Wenatchee, Washington, do you not?

A. Yes.

Q. As a matter of fact, you lived in that area at one time?

A. That is the apple capital of the world.

Q. Will you tell us, from your knowledge, something about the nature of the Wenatchee paper and the desirability of the arrangement made with it?

3011 A. Well, actually I have taken a particular interest in Wenatchee because of my association and background with the State of Washington. I followed with interest, over a period of maybe fifteen years, the efforts of our earlier salesman, Sherman Montrose and later, Hal Hanson, who replaced Montrose in the 1950's, to try and place our full daily feature service in the paper. We had already been supplying them with a color comic supplement for a number of years, and we felt there was an advantage to the client from a business standpoint, from a readership standpoint, to have the continuity of daily features which the readers would follow in the Sunday edition. But the particular feature situation there being they only used ten, twelve features in their entire newspaper, as compared to twenty-five or thirty comics and features used by the Yakima paper of similar size in the same state, same area, made it not possible for them to probably at any foreseeable point take on

the Full Service. This led to the development of the idea by Mr. Hanson during the negotiation period, which was reported in these exhibits, that the Intermediate Service might serve their interests better, and this was their option, there was no additional charge involved or no reduction in cost on the readyprint, it was their option, if they would like to try out 3012 the Intermediate Service.

Q. There was no question about "You take this or you don't get that"?

A. No. They could have the Intermediate Service or the readyprint King Features, for example, or Acme Color Print had sold them the comic section at that time, they could still have the privilege of buying the Intermediate Service at \$27.00. Because of the peculiar nature of their publication and their feature desires we knew—and this has been true for ten years or more—they would never be a prospect for the larger feature service.

Q. With reference to Bend, Oregon, as reflected in exhibits P-152 and P-153, is it fair to say that what NEA was doing was promotional work to sell a readyprint section?

A. I believe so, yes. It was helping the newspaper establish a weekend edition, and the color comic section would be a definite asset to them in promoting new readership for this new weekend edition.

Q. And all that you did was to let them have two daily comics out of the Full Service until such time as they had decided upon the readyprint, is that correct?

A. Yes. There was also the potential here that they might come back to the daily Full Service at some time, and it would be to their advantage to keep the readers interested in 3013 the two additional comics during that period.

Q. There was no printing by NEA of the daily comics, was there?

A. No, this was done locally. We supplied the material to them for local printing.

Q. So there was no tie of printing to comics in that?

A. No, merely an accommodation to the client.

Q. With reference to P-154 and Ponca City, Oklahoma, it is my understanding, from what you have told Mr. Bernstein, that in the readyprint section, which was sold to Ponca City, Alley Oop was already in the makeready?

A. Alley Oop was already in the makeready of the section that was on the press, the readyprint section.

Q. Who owned that makeready?

A. That was NEA's makeready.

Q. NEA had an investment in that makeready?

A. That is right.

Q. Now, is it correct, that to aid the paper you let it have Alley Oop without a separate charge for it?

A. That is correct.

Q. Who benefited from that?

A. I would say the newspaper and its readers benefited.

Q. It was something that NEA could do, as a sales promotion matter, to aid its customer without additional cost

3014 to NEA?

A. Yes.

Q. I would like to ask you one or two questions which I asked Mr. Anderson. From your broad experience in the color comic supplement field, do you know of any comic which is so strong that a publisher would buy printing, which he might not otherwise want, to get that comic?

A. No, I don't believe I do.

Q. I might ask you, while I am fumbling with these papers, how long have you had direct contact with color comic supplements, as an employee of NEA?

A. Ten, fifteen years, when I was assistant sales manager or sales director.

Q. At any time in the past and now has NEA ever sold comic features to newspapers at discounts, rebates or reduced prices on the condition, agreement, or understanding that such newspaper purchasers shall not deal in the color comic supplement printing services offered or sold by any competitor or competitors?

A. No, NEA has not.

Q. As a matter of fact, NEA has sold its color comic features to anybody who wanted them, isn't that correct?

A. We have been most anxious to.

Mr. STEVENS: That is all.

3015

REDIRECT EXAMINATION

By Mr. BERNSTEIN:

Q. It is obvious, Mr. Gamble, that NEA is most interested in seeing a following development for NEA comics, isn't that correct?

A. That, I would say, is a fair statement.

Q. When you do provide the comics free to a newspaper, NEA is getting some benefit from that by increased following, isn't that correct?

A. There may be future benefit in it from the standpoint the newspaper will continue to be our customer.

Mr. BERNSTEIN: I have no further questions.

The COURT: All right.

Mr. BERNSTEIN: That concludes the Plaintiffs' case with respect to the allegation against NEA of the violation of Section 3 of the Clayton Act.

Mr. STEVENS: We have no additional proof to offer your Honor.

The COURT: Does that close the evidence?

Mr. BERNSTEIN: We are closed on the evidence of the entire case except one item. We have received permission from counsel for Greater Buffalo to offer in evidence an exhibit, as 3016 P-155, a list of the officers of the International Color Printing Company from the year 1950 to 1959.

Mr. MOORE: To that we have no objection. We are back in the main case.

(Thereupon document was marked Plaintiff's Exhibit P-155 and received in evidence.)

Mr. BERNSTEIN: That closes the evidence.

The COURT: We settled this morning that sixty days after you get the transcript I will have your briefs. In the letter, when you send me the briefs, certainly you, Mr. Bernstein, and I invite the others, can remind me of their desires to set aside a day for oral argument.

Mr. STEVENS: I would like the record to show a motion to dismiss the Clayton Act, Section 3 charge against NEA for failure of proof.

The COURT: I will reserve on that.

Mr. STEVENS: I understand, your Honor.

3017 The COURT: Gentlemen, it has been three good stiff days here of work. I think finally we are through. Alley

Oop.

(Thereupon the Court was in recess.)

3018 (— for ident., P-1 in evid.,

H. T. Noel, Official Reporter, U.S. District Court.)

cc: Walter Koessler, William Hammond, Kenneth Koessler.

MAY 14, 1956.

MR. ROBERT WILKERSON,
Equitable Life Assurance Society
Comer Building, Birmingham, Alabama

DEAR SIR: I am writing this letter in response to your request that we give you a background of International Color Printing Co.

Company was incorporated in 1922 for purpose of printing a Sunday newspaper in Wilkes-Barre, Pa. In 1924 idea of printing comic supplements for other newspapers was conceived. First order was from King Features Syndicate—300,000 four page sections weekly.

To produce these sections, company erected a single width, four deck Hoe press in a small residential type building on Market St., Pittston, Pa.

Owner of all the original stock, except two qualifying shares, was R. R. Govin, who at that time was engaged in businesses in New York and Havana, Cuba. Company was capitalized at \$50,000, but no cash was paid in for the stock. Operating funds and cash for original machine were loaned to International by other companies owned by Mr. Govin.

In this manner approximately \$90,000 was advanced in the period from 1925 to the end of 1927. This was the only cash ever received from owners. During the years from 1927 to 1933 the original loan was repaid but also, during that period several additional presses were installed with no additional capital or borrowing.

Company signed a contract with King Features in 1925 to print all of the Syndicate's comic supplements. Later on, because of the distance to Pacific Coast, contract was amended to read "at least seventy-five per cent" of all printing sold by Syndicate. Original contract, and renewals, were in effect from 1924 to June, 1955, when we signed a new contract which will carry us to 1965 with option for renewal. By that time we will have been printing King's work for a period of over forty-one years.

What is King Features Syndicate? It is by far the largest newspaper syndicate in the World. It owns rights to comic and editorial features, which it sells to newspapers in every country outside the Iron Curtain. Syndicate has had tremendous growth and International Color has grown with it. Starting with the one single width Hoe press, with a total capacity of a little more

than one million sections weekly, we have grown until we now have the following press equipment:

3019

Four single width Hoes.
Five single width Gosses.
Six double width Hoes.

Total printing capacity now over forty-five million four page sections weekly and we are actually producing about thirty million sections every week. As stated before, this work is obtained through King Features Syndicate.

The Syndicate sells its editorial and comic features to several thousand newspapers. There are actually six hundred Sunday newspapers in the United States, Canada and Latin America using colored comic sections. Of this total we service one hundred seventy-five and Greater Buffalo Press over one hundred twenty-five. Greater Buffalo Press is mentioned specifically at this time because of Recent Purchase by Greater Buffalo of International Color Printing Co. stock.

Other newspapers either print their own comic sections or have the work done by smaller printing companies. Total of Greater Buffalo and International Color Printing Company produces over 63,000,000 four page sections weekly. No other printing company produces more than 6,000,000 weekly and it is safe to say that the extra capacity now in reserve in other plants could not print more than a fractional part of the supplements now produced by International. Greater Buffalo differs from International in a number of respects, but principally in the fact that it deals directly with newspapers whereas International works exclusively through King Features Syndicate, which in turn sells to the newspapers.

It has cost International in the neighborhood of \$1,500,000.00 to install sufficient equipment to turn out present volume. A detailed study by consolidated appraisal company of New York City indicates that cost to reproduce present facilities would be well over \$2,500,000.00

As stated earlier, there has been no cash from owners, other than the original \$90,000. which was repaid within a few years. On the other hand, besides building the plant, company has given to the Gevin family, owners before Greater Buffalo

Press, several hundred thousand dollars in the form of dividends, etc.

Cash for growth, repayment of loans, payments of dividends, etc., has been obtained from earnings. It should be pointed out here that company's average monthly loan has never been more than \$10,000. And during the past several years there has been practically no borrowing of any kind. Last year daily cash balance averaged approximately \$130,000.

King Features pays company, according to contract, on a weekly basis. International pays for newsprint, ink, etc., on a thirty day basis. This arrangement provides us with what might be called hidden working capital.

International Color services papers in a great many states and prints for Southern state papers over eight million four page sections weekly. For many years we have considered the advisability of putting a plant in the South, but until very recently, this was impossible because of lack of newsprint there. Greater Buffalo also had plans for plant in the South but was held up by excessively high cost of newsprint when shipped

from Canada. At just about the same time International 3020 and Greater Buffalo made newsprint contracts in the

South, Greater Buffalo with Southland at Lufkin, Texas and International with Coosa River at Coosa Pines, Alabama. To handle work in the South and at same time maintain satisfactory facilities in Wilkes-Barre and Peoria, we anticipate the installation of press, stereo and paper handling equipment in Sylacauga, Ala., with a value of not less than \$700,000, over a several year period.

The advantages of getting together to work out plans which will be for the mutual benefit of both companies, as well as advantages to Southern Newspapers, immediately became obvious. There will be an exchange of mechanical ideas, machinery, etc., and such exchange will not only increase the profits of both companies—it will make it possible to save money for Southern publishers and thus protect the interests of both companies.

Southern newspapers now receiving weekly colored comic supplements from us are the following:

Anderson, S.C., Independent
Asheville, N.C., Citizen Times
Bradenton, Fla., Herald

Bristol, Va., Herald Courier
Charleston, S.C., News & Courier
Clearwater, Fla., Sun
Danville, Va., Register
Decatur, Ala., Daily
Durham, N.C., Herald Sun
Gadsden, Ala., Times
Greenville, S.C., News
Huntsville, Ala., Times
Jackson, Miss., State Times
Jackson, Tenn., Sun
Kannapolis, N.C., Independent
Lake Charles, La., American Press
Lakeland, Fla., Ledger
Lynchburg, Va., News & Adv.
Martinsville, Va., Bulletin
Monroe, La., News Star World
Montgomery, Ala., Advertiser
Orangeburg, S.C., Times Democrat
Spartanburg, S.C., Herald Journal
Tupelo, Miss., Journal
Tuscaloosa, Ala., News
Wilmington, N.C., Star News
Raleigh, N.C., News & Observer
Birmingham, Ala., News
Chattanooga, Tenn., Times
Columbia, S.C., State
Columbus, Ga., Ledger Enquirer
Charlotte, N.C., Observer
Knoxville, Tenn., Journal
Macon, Ga., Telegraph News
Orlando, Fla., Sentinel
St. Petersburg, Fla., Times
Savannah, Ga., Morning News
Winston Salem, N.C., Journal & Sentinel
Augusta, Ga., Chronicle
Jackson, Miss., Clarion Ledger
Miami, Fla., Herald
Norfolk, Va., Pilot
Richmond, Va., Times
Roanoke, Va., Times World

A word about depreciation reserve. The original Hoe press installed by us in 1924, was then capable of producing 14,000 four page sections per hour. It is now producing 30,000. There is not a single press in the plant which is not doing from fifty to seventy-five per cent more work per hour than was originally intended. Reason—we have our own machine shop and engineers and our regular maintenance crew keeps making whatever changes are necessary to improve speed and at the same time lengthen life of press.

3021 About relations with King Features Syndicate. I have already given you a copy of the recently signed contract renewal, with automatic renewal for like periods of time until notice is given in writing of minimum of two years before expiration date.

About newsprint supply. Hearst Newspapers have a contract with Coosa River Newsprint Company to supply a minimum of 10,000 tons of newsprint a year which Hearst guarantees to purchase and use and which by assignment Hearst guarantees to resell to International Color Printing Company. In short, we have a contract for Coosa River newsprint which will carry us for 14 years from this date. This contract provides that International Color will save \$4.50 per ton on each ton of newsprint under the present price—we are now paying in our Northern plants, and with the minimum use of 10,000 tons per annum we will save over \$35,000.00 per year since we will have to pay \$1.00 per ton or less for hauling from Coosa Pines to Sylacauga. This saving will, of course, go a long way toward amortizing the cost of the proposed new building.

International Color Printing Company is now the wholly owned subsidiary of Greater Buffalo Press but will continue to operate under the same management as during the past 30 years.

Summary. By putting a plant in Alabama and working closely with Greater Buffalo Press we anticipate economies in newsprint transportation and production which will, besides improving the profit pictures of both companies, prove beneficial to our newspaper customers and thereby make solid our own future. The first newspaper supplement was printed in 1896. Today every Sunday newspaper, with one exception, the New York Times, uses the comic sections not only as

circulation builders, the original intention, but also as a producer of considerable income through advertising.

Hoping that this will give you at least in a general way the information you require about background of International Color Printing Company, I remain

Sincerely yours,

INTERNATIONAL COLOR PRINTING CO.

JOSEPH J. GORMAN,

President & General Manager.

JJG/HLM

3022 [Ex. 2 for ident., P-2 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

AGREEMENT made and entered into this 4th day of September, 1930, by and between KING FEATURES SYNDICATE, INC., a corporation organized under the laws of the State of New York, hereinafter called the party of the first part, and INTERNATIONAL COLOR PRINTING COMPANY, a corporation organized under the laws of the State of Pennsylvania, hereinafter called the party of the second part:

WITNESSETH: The party of the first part is engaged in furnishing colored supplements to various newspapers published throughout the United States of America.

The party of the second part represents that it is prepared to print and distribute such colored supplements for the party of the first part, and it is the desire of the parties hereto to enter into an agreement whereby the party of the first part may have a portion of its colored supplements printed and distributed for it by the party of the second part.

NOW THEREFORE, in consideration of the foregoing recitals, the sum of one dollar, and other good and valuable consideration, by each of the parties to the other in hand paid, receipt whereof is hereby acknowledged, it is agreed between the parties hereto as follows:

FIRST: The party of the second part agrees to print, wrap and ship for the party of the first part, to the various clients designated by the party of the first part, such quantities as it may order, provided that the aggregate of such orders shall be for not less than 500,000 four page comic supplements per week,

with the outside pages to be printed in four colors, and the inside pages to be printed in three colors, on thirty-three pound newsprint paper, upon the terms and conditions hereinafter stated.

3023 **SECOND:** This contract is to be in force for a term of three years commencing on the 8th day of September, 1930 and shall continue on thereafter until either party has given to the other six months' notice in writing of its desire to terminate it, which notice may be given at any time after the 8th day of March, 1933.

THIRD: The party of the second part undertakes and agrees that such supplements so printed shall be printed in a proper and workmanlike manner, and shall be satisfactory to the clients of the party of the first part, and that the same shall be printed as promptly as possible after receipt by the party of the second part of the matrices required for such printing, and on a schedule of at least two weeks in advance of the release date of such supplements.

FOURTH: The party of the first part undertakes and agrees to furnish to the party of the second part the necessary matrices for printing such comic supplements in time for the party of the second part to comply with the terms of this agreement, and to pay to the party of the second part rates in accordance with the following schedule, for each one thousand supplements so printed, wrapped and labeled ready for shipment f.o.b. railroad at Wilkes-Barre, Pa.: For the first 500,000 supplements \$3.85 per thousand; for the next 250,000 supplements, up to 750,000, \$3.65 per thousand; for the next 250,000 supplements, up to 1,000,000, \$3.28 per thousand; for the next 100,000 supplements, up to 1,100,000, \$3.23 per thousand; for the next 100,000 supplements, up to 1,200,000, \$3.18 per thousand; for the next 100,000 supplements, up to 1,300,000, \$3.12 per thousand; for the next 100,000, up to 1,400,000, \$3.09 per thousand; for the next 100,000, up to 1,500,000, \$3.07 per thousand; for the next 100,000, up to 1,600,000, \$3.06 per thousand; for the next 100,000, up to 1,700,000, \$3.05 per thousand; for the next 100,000, up to 1,800,000, \$3.04 per thousand; for the next 100,000, up to 1,900,000, \$3.03 per thousand; for the next 100,000, up to 2,000,000, \$3.02 per thousand; for the next 100,000, up to 2,100,000, \$3.01 per thousand; for the next 100,000,

3024

up to 2,200,000, \$3.00 per thousand; for the next 100,000, up to 2,300,000, \$2.99 per thousand; for the next 100,000, up to 2,400,000, \$2.98 per thousand; for the next 100,000, up to 2,500,000, \$2.97 per thousand.

FIFTH: It is further mutually agreed that supplements provided for herein shall be printed from not more than one combination of comic page matrices for each 50,000 supplements so printed, and that the pages composing such makereadies shall be determined by the party of the first part.

SIXTH: The party of the second part further agrees that it will not print comic pages or supplements from matrices furnished to it, or caused to be furnished to it, by the party of the first part, except in accordance with orders in writing from the party of the first part.

SEVENTH: The various prices per thousand supplements aforementioned are based upon the present contract price for newsprint of \$3.10 per cwt., delivered at Wilkes Barre, Pa., for thirty-three pound newsprint paper, thirty-one and one-fourth inches wide, and it is expressly agreed and understood that the price for such supplements shall be readjusted proportionately, either upward or downward, as the price on newsprint sold under contract to the party of the second part shall increase or decrease during the term of this contract.

EIGHTH: It is further mutually agreed that during the term of this contract, party of the second part shall not produce printed comic supplements for any other than the party of the first part.

NINTH: It is further mutually agreed and understood that this contract supersedes all previous contracts between 3025 the parties hereto.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above mentioned.

Witness:

KING FEATURES SYNDICATE, INC.,
 By JOSEPH V. CONNOLLY

Witness:

THE INTERNATIONAL COLOR PRINTING Co.,
 By JOSEPH J. GORMAN, *Secty. Treasurer.*

3026 [P-3 for ident., P-2 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

OCTOBER 21, 1932.

KING FEATURES SYNDICATE, INC.,
235 East 45th Street,
New York City

GENTLEMEN: This is to advise that effective with the releases printed for November 6th our printing rate is to be reduced at the rate of 10¢ per thousand four-page sections on all supplements printed for you commencing the date specified. This reduction is to continue up to and including September 3, 1933. Beginning with supplements printed for September 10, 1933 the printing rate is to be further reduced in the amount of 10¢ per thousand four-page sections, making the total amount of the reduction 20¢ per thousand four-page sections, commencing September 10, 1933.

It is further understood and agreed that our contract dated September 4, 1930 is to be extended one year, that is, until September 8, 1934, all other terms and conditions of our existing agreement to remain the same.

Very truly yours,

THE INTERNATIONAL COLOR PRINTING COMPANY.
By JOSEPH J. GORMAN, *Secretary-Treasurer*.

ACCEPTED BY KING FEATURES SYNDICATE, INC.
By JOSEPH V. CONNOLLY

3027 [P-4 for ident., P-4 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

It is hereby agreed between the parties hereto, this 26th day of April, 1933, that the contract between them dated the 4th day of September 1930, and subsequently amended by letters dated August 23, 1930 and October 21, 1932, is extended for a period of two years; that is, from September 8, 1934 to September 8, 1936.

It is further agreed that International Color Printing Company, by giving notice six months in advance, may extend this agreement and all of its terms and conditions for an additional period of one year; that is, from September 8, 1936 to September 8, 1937.

In consideration of this extension of contract International Color Printing Company agrees to pay to King Features Syndicate, Inc. Four Hundred Dollars (\$400.00) per month beginning with the 10th day of May, 1933, each monthly payment to be made on or before the 10th day of the month, which said sums shall be credited to the account of El Mundo of Havana with King Features Syndicate, Inc., and which account is hereby accepted to be \$17,431.31. It is understood and agreed that this monthly payment of Four Hundred Dollars (\$400.00) will be made by International Color Printing Company with the understanding that International Color Printing is given two million (2,000,000) four-page comic supplements weekly to print, under the terms of the contract, and that the sum of Four Hundred Dollars (\$400.00) per month shall be reduced each month in proportion to any reduction from the minimum run of 2,000,000 comic supplements per week. Said reduction is to be computed on the basis of each 100,000 reduction. For each said 100,000 reduction in the number of supplements below 2,000,000 the monthly payments to be made by International Color Printing Company are to be reduced one-twentieth.

It is understood and agreed that the indebtedness of El Mundo to King Features Syndicate, Inc. is \$17,431.31 as of this date, and that the payments to be made by International Color Printing Company to King Features Syndicate, Inc. shall cease after this account has been satisfied.

3028 It is understood and agreed that International Color Printing Company, in agreeing to make payments on the account of El Mundo in this instance, assumes no liability with respect to any other obligations of El Mundo with King Features Syndicate, Inc., International News Service, Inc., or any affiliated organization, and King Features Syndicate, Inc. agrees not to hold International Color Printing Company liable for any such future obligations subsequent to the date of this instrument.

King Features Syndicate, Inc. hereby assigns to International Color Printing Company its claim against El Mundo in the amount of \$17,431.31 with the understanding that this assignment shall be effective only in the amount that International Color Printing Company has paid on this account at the time that International Color Printing Company avails itself of such assignment.

In figuring any reduction in the monthly payments on the basis of the reduced run, it is agreed that the reduction shall be computed on the average weekly run for the preceding month, and that there shall be no reductions if the average run for the preceding month equals 2,000,000.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands the day and year first above written.

KING FEATURES SYNDICATE, INC.
By JOSEPH W. CONNOLLY

Witness:

INTERNATIONAL COLOR PRINTING COMPANY.
By JOSEPH J. GORMAN, *Secy.-Treas.*

Witness:

3029

_____ for ident., PX5 in evid.,
H. T. Noel, Official Report, U.S. District Court.

WILKES-BARRE, PA.,
June 1st 1940.

KING FEATURES SYNDICATE, INC.,
235 East Etaon Street,
New York, N.Y.

GENTLEMEN: With the changes covered in the following paragraphs, International Color Printing Company agrees to an extension of its present printing contract with King Features Syndicate, dated September 4th, 1930 and subsequently amended by letters of August 20th, 1930 and August 21st, 1932 and further extended by an agreement date April 26th, 1933, for a period of three years from May 13th, 1940 and thereafter until either party has given to the other party six months notice, in writing, of its desire to terminate it.

International Color Printing Company is to print comic supplements exclusively for King Features Syndicate while King Features Syndicate purchases from International Color Printing Company at least seventy-five (75%) percent of its supplement printing requirements.

The printing of New York Sunday Mirror is to be separate and apart from this agreement.

The schedule of prices for weekly printings from May 13th, 1940 to the end of the period of this contract will be as follows:

For the first 500,000 four-page standard size supplements or their equivalent, \$3.0841 per thousand;

For the next 250,000 four-page standard size supplements or their equivalent, up to 750,000, \$2.9841 per thousand;

For the next 250,000 four-page standard size supplements or their equivalent, up to 1,000,000, \$2.7141 per thousand;

For the next 100,000 four-page standard size supplements or their equivalent, up to 1,100,000, \$2.6641 per thousand;

For the next 100,000 four-page standard size supplements or their equivalent, up to 1,200,000, \$2.6141 per thousand;

For the next 100,000 four-page standard size supplements or their equivalent, up to 1,300,000, \$2.5541 per thousand;

For the next 100,000 four-page standard size supplements or their equivalent, up to 1,400,000, \$2.5241 per thousand;

For the next 100,000 four-page standard size supplements or their equivalent, up to 1,500,000, \$2.5041 per thousand;

For the next 100,000 four-page standard size supplements or their equivalent, up to 1,600,000, \$2.4941 per thousand;

For the next 100,000 four-page standard size supplements or their equivalent, up to 1,700,000, \$2.4841 per thousand;

For the next 100,000 four-page standard size supplements or their equivalent, up to 1,800,000, \$2.4741 per thousand;

For the next 100,000 four-page standard size supplements or their equivalent, up to 1,900,000, \$2.4641 per thousand;

For the next 100,000 four-page standard size supplements or their equivalent, up to 2,000,000, \$2.4541 per thousand;

For the next 100,000 four-page standard size supplements or their equivalent, up to 2,100,000, \$2.4441 per thousand;

For the next 100,000 four-page standard size supplements or their equivalent, up to 2,200,000, \$2.4341 per thousand;

For the next 100,000 four-page standard size supplements or their equivalent, up to 2,300,000, \$2.4241 per thousand;

For the next 100,000 four-page standard size supplements or their equivalent, up to 2,400,000, \$2.4141 per thousand;

For all four-page standard size supplements or their equivalent over 2,400,000 up to 10,000,000, excluding booklets and the New York Mirror, \$2.4041 per thousand;

For all four-page standard size supplements or their equivalent over and above 10,000,000, exclusive of booklets and New York Mirror \$2.3791 per thousand.

It is understood and agreed that special circumstances quotations apply to printings for certain customers and 3031 for such reason special rates will be provided. Additional charges or deductions shall be made in accordance with schedule of special rates already in effect. This schedule shall be subject to change upon approval of proper agents of King Features Syndicate and International Color Printing Company from time to time as conditions or circumstances necessitate.

All rates quoted herein are based on present cost of 30 newsprint, 30 $\frac{1}{4}$ " wide at \$51 per ton delivered at Wilkes-Barre, Pennsylvania or Peoria, Illinois. As at present, any increased cost or saving resulting from change of cost of newsprint shall be passed on to King Features Syndicate and shall be added to or deducted from the said schedule of rates.

Sixty-four page quarter size booklets up to 1,555,000 monthly will be billed at the regular contract rate of \$2.4041 for each equivalent of a four-page standard size supplement. For printing of all sixty-four page quarter size booklets over 1,555,000 monthly the International Color Printing Company will send to King Features Syndicate a credit memorandum of ten (10c) cents per thousand sixty-four page quarter size booklets.

Other working arrangements covered in previous contracts and not changed by this exchange of letters will be continued during the extension of the old contract.

Very truly yours,

JOSEPH J. GORMAN, *President.*
International Color Printing Co.

3033 [——— for ident. P-7, in evid., H. T. Noel, Official Reporter, U.S. District Court.]

WILKES-BARRE, PA.

June 22, 1940.

KING FEATURES SYNDICATE, INC.,
New York, N.Y.

GENTLEMEN: This is our acceptance of suggestion contained in your letter of June 5th, 1940 to the effect that second paragraph of our letter dated June 1st, 1940 which read as follows:

"International Color Printing Company is to print comic supplements exclusively for King Features Syndicate while King Features Syndicate purchases from International Color Printing Company at least seventy-five (75%) per cent of its supplement printing requirements."

Should be eliminated and the following paragraph substituted:

"International Color Printing Company is to print comic supplements exclusively for King Features Syndicate while King Features Syndicate purchases from International Color Printing Company at least seventy-five (75%) per cent of its supplement printing requirements, except in the event of emergencies such as the possibility of a newsprint shortage, strikes, or other plant difficulties."

Very truly yours,

JOSEPH J. GORMAN, *President,*
International Color Printing Co.

3034 [P-10 for ident., P-11 in evid., H. T. Noel, official reporter, U.S. District Court.]

JANUARY 4, 1954.

Memorandum:

Walter Koessler phoned me early this morning from Buffalo. He told me he had seen Mr. Bitner regarding the Utica and Binghamton printing. He put in his price for Utica. At the same time he told me that he discouraged Bitner from having Greater Buffalo print the Binghamton Press run, saying that KFS could handle that better than he could. Koessler told me that Bitner replied "That's the way I would like it."

Koessler also told me that the Gannett people would probably try to dispose of their Rochester color presses but he didn't think they were worth much. At least, he couldn't use any of them. Later I told Mr. Gorman about this and he was not interested in the presses. Koessler also told me, unless I am mistaken, that Bitner indicated interest in comic pages at Utica and this is something we may be able to use to advantage.

Mr. Hagan, I believe, has an appointment here in New York today with Messrs. Cruickshank and Bitner.

FJN:ML

3035 [P-11 for ident., P-11 in evid., H. T. Noel, official reporter, U.S. District Court.]

KING FEATURES SYNDICATE,
235 East 45th Street,
New York 17, N.Y.
Tel. MUrray Hill 2-5600,
Cable Address Kingsyn, NY,
April 15, 1954.

From: F. J. Nicht.

To: Ward Greene.

DEAR MR. GREENE: There are a few things I would like to pass along to you for your information in connection with our ready-print business so that you will be brought up to date.

Our relations with Greater Buffalo Press have been working out splendidly and I have reason to believe that we can gain still further by expanding our relations with them.

As a result of the increased rate being put into effect by ICP, the Syndicate will be up against an additional outlay on this account running somewhere around \$3,000 weekly in round figures. I am doing everything possible to bring down this amount. One way I think I can contribute will involve the transfer of three, four or five of our readyprint runs to Greater Buffalo. If this is done, and if I can do it the way I think it can be done, we will save somewhere from \$500 to \$700 a week and maybe more. But I think it should be done. It will result in the expansion of our business with Greater Buffalo and perhaps put our eggs in more baskets. ICP isn't going to like this but if we can secure lower prices elsewhere I certainly think we should obtain them. I am going to see the Greater Buffalo Press people during Convention Week and I have plenty to take up with them.

Speaking of Greater Buffalo Press, here are a couple of ways in which our cooperation is worked out. The Gannett papers at Utica and Binghamton gave up the printing of their comic supplements in their own plant. In order to obviate price-cutting and the usual nastiness that attends competitive situations, we agreed to let the Greater Buffalo Press print the Utica run and we took the Binghamton Press run. In another instance at Waterloo, Iowa, the paper was in the market for printing of a six-page standard size section, which is poison to ICP, and their printing price to us is too high. Mr. Koessler of Greater Buffalo

and I got together on this. He took the printing of the supplement but agreed to pay us \$50.00 a week, which we are billing against Greater Buffalo Press for "special mat services." We are going to be hit hard as a result of the reduction in the MIRROR printing rate. We have some other competitive printing situations where we may have to suffer rate decreases.

The matter of the Southern printing station is still up and I don't know what is going to happen in that connection. I have an appointment during Convention Week with Sam Bloom who is flying up from Texas to talk with me about what I suspect is his interest in the establishment of a printing station in Texas. If my suspicion is correct and if he is sponsoring this move and it results in the establishment of a competitive printer in Texas, we are likely to be seriously hurt. Tomorrow I have an appointment with Mr. Chambers of the Dallas Times Herald and I suspect, too, that he wants to talk about this same thing. We print the Dallas Times Herald supplements now at Fort Worth.

After Convention Week I'd like to discuss our readyprint business with you again.

Sincerely yours,

F. J. NICHT.

FJN:ML

3037 [P-12 for ident., P-12 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

APRIL 21, 1954.

Memorandum:

I had breakfast with Walter Koessler and Bob Lalor of Greater Buffalo Press. I think we covered about everything that could be discussed up to this time.

Koessler is very definitely thinking of establishing a Texas printing plant and it will probably be at Lufkin. I was able to develop the fact that they probably would not start such a plant in Texas on the basis of printing the Dallas News, Houston Chronicle and San Antonio News & Express only. They would need much more production than that. It was disclosed they had been talking to the New Orleans Times Picayune, Oklahoma City Oklahoman & Times and Memphis Press Scimitar, just as we have. It can be assumed, therefore, that if they got

some or all of this new business it would probably justify the Texas plant.

On the other hand it was developed that if we joined forces, the Texas plant would undoubtedly be assured for in this event, in addition to the three big Greater Buffalo Texas runs, the plant would also print the Houston Post, maybe the Times Herald, and perhaps we could get the San Antonio Light interested and on top of that we might be able to transfer some other business to the new plant such as Shreveport. This will have to be studied.

On this basis we would have to work out some sort of a selling arrangement with GBP. They would want to hold their own business, of course, and print whatever new business we could give them but on what basis the latter would be handled is something that would have to be discussed. All of this could very easily have a harmful effect on ICP's business in the Southwest and still further diminish their volume.

I confirmed again the figures Mr. Koessler gave me recently for the printing of Erie and some Ohio runs and he will be prepared to take that over on very short notice. The next step in this connection would be for us to try to make new long-term contracts with Toledo, Youngstown, Erie, and perhaps Springfield, Missouri.

Koessler brought up a very interesting matter, one that has been in our minds all along, but obviously he is going to work on it himself and that is to try to get Eastern Color to agree to leave their business alone. We, on our part, should try to accomplish the same thing. I will try to see Mr. Pape some time this week if possible. If such a plan could be carried out it will still further stabilize the supplement printing business and eliminate price-cutting tactics.

After things settle down I think that I should go to Buffalo and work things out on the ground finally and Jimmy Burns should go along. I brought up the matter of the Fargo printing which is done by Greater Buffalo through NEA and I
3038 don't think we should go after this printing. If we can sell publication rights on some of our other pages, all well and good, but certainly the printing should be left alone. Koessler also told me that they weren't working at all closely with NEA and have no intention of doing so from now on. Koessler also said he understands the Polish outfit in Buffalo may be having financial difficulties. Be sure to look up this

account and tell Mr. Gordon to give them the works if they don't come through. Koessler also told me he understands the Wilmington Star has discontinued publication. Let's verify this. If this is true it could have a bearing upon the Wilmington printing plant.

FJN:ML

3039 [P-13 for ident., P-13 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

KING FEATURES SYNDICATE,

235 East 45th Street,

New York 17, N.Y.,

Tel. Murray Hill 2-5600,

Cable Address KINGSYN, N.Y.,

May 26, 1954.

To: Ward Greene

From: F. J. Nicht

DEAR MR. GREENE: This memorandum is intended as a final review and summary of the readyprint situation.

For more than two years I have been doing everything within my power to strengthen the Syndicate's position in this important field. From time to time I have outlined definite plans. These have embraced the possibility of establishing supplement printing plants in San Francisco, in Texas, or in the South. They have also included a consideration of purchasing International Color Printing Company. I have regarded the protection and expansion of the Syndicate's readyprint business as of the utmost importance because anything that weakens this enterprise of the Syndicate, weakens the Syndicate's business as a whole.

I endeavored to point out and predict what might happen if we were unable to accomplish anything with respect to these plans. Now, some of those predictions have come to pass. Greater Buffalo Press is planning to establish a supplement printing station in Lufkin, Texas.

Failing to get the support for what I had in mind and referred to above, I found it necessary to proceed along other lines and do whatever I could for the protection and advancement of the Syndicate's interest in the readyprint field. And in connection with this, I can report as follows.

I have been able to make deals with Greater Buffalo Press which I do not think it would be wise to publicize. These deals, unwritten, include a very broad cooperation between Greater Buffalo Press and KFS. For example, we were after certain Gannett supplement printing, two runs involving Utica and Binghamton. By mutual consent, GBP took Utica and we took Binghamton. With the agreement of Greater Buffalo we stepped out of the picture at Waterloo, Iowa, which is about a 50,000 run. I considered it good business to step out of the picture due to ICP's high costs and inflexibility in printing so-called odd size sections. The Waterloo run is a six-page standard and that's a cinch for Greater Buffalo to print but difficult for ICP. GBP lined up this business with our foreknowledge and consent and even encouragement and we get \$50.00 a week out of it. That's net. I finally succeeded in getting what I would call a wholesale rate on any supplement printing we turn over to GBP.

I am now in the process of transferring three or four good size runs to Buffalo which will save the Syndicate several hundred dollars weekly because the rate I have been able to get from them for this printing is less than we pay Wilkes-Barre at present. Mr. Gorman has been apprised of this and I am sure he understands he is likely to lose other business because of inability to meet the rates I have been able to obtain from GBP.

In addition, as a result of recent meetings, I have been able to come to an understanding with GBP involving their proposed Lufkin plant. They have agreed to give us a cut of 50 cents per thousand (based on circulation) on their present business in Texas which includes the Dallas NEWS, San Antonio EXPRESS & NEWS and Houston CHRONICLE. They have also agreed to give us the same cut on any additional business they negotiate themselves for this plant. On top of that we will receive 50 cents per thousand on any of our present supplement business we may turn over to the Lufkin plant, the Dallas TIMES HERALD, Houston POST, for instance, and, moreover, give us a 50 cents per thousand advantage on any prices they establish for printing on their own. That really means a total of \$1.00 per thousand. To put it another way, we can expect to receive from GBP a cut of somewhere between \$300.00 and \$400.00 a week net on their three existing Texas runs. This

sort of carries out the theory that if you can't lick 'em you might as well join them and that is what we have done in this instance. This is due to our own failure to have a Texas plant.

Furthermore, I believe I have succeeded in discouraging Greater Buffalo Press from doing any more business with NEA. We also have an understanding with them that we will not solicit any business they have and they will not solicit any business we have. This results in stabilization. I hope you agree that we have done the best possible under the circumstances but I still think it was a mistake for us not to have our own plant in Texas. There isn't room for two printing plants in that State. Hence, we were beaten to the post.

I am still working on the possibility of having a Southern printing plant. Mr. Gorman is looking into this again right now at Jacksonville and Birmingham. However, I have no confidence in ICP's aggressiveness in this or any other matters involving capital expenditure or expansion. I am very much discouraged with the outlook for ICP. And, in passing, again I say we ought to think further about taking them over or getting someone else to take them over and I have that phase in mind also. In self-protection I think it is wise for the Syndicate to establish good relations with its competitors even if injurious to ICP. I want to assure you I am proceeding with extreme caution.

I have also had meetings with the operators of the Wilmington STAR COLOR PRESS and expect to be able to establish a relationship with them that will be to the Syndicate's advantage. They are a potential competitor. I have a hunch that I might be able to encourage them to buy out ICP. If we are able to make final arrangements with Wilmington, there are a number of nearby runs we might turn over to them, especially where the client would gain a lower transportation rate. Naturally no deals would be made unless the Syndicate's profit and security were increased.

I believe, too, I have succeeded in convincing Wilmington that they should do no business with NEA, always our arch enemy.

I have it in mind to try to make a deal with Eastern Color at Waterbury so that they will find their existing business protected and leave our business alone. They have given us many headaches because of their low printing prices. Water-

bury has suffered grievously as a result of their loss of a great volume of booklet printing.

These kind of deals I regard as protection to the Syndicate and give promise of additional readyprint profit. As a result of the understandings between us and some of our readyprint competitors we do have a great deal to gain and I hope you will agree that it might make all of us look silly if supplement printing proposals are sought from these competitors by organization newspapers without our foreknowledge. There is good reason to believe that these competitive printers are likely to tip us off anyway.

As you know, our readyprint profit has been decreasing. This has been due to some circumstances beyond our control, the MIRROR matter being one. Competition principally through the instrumentality of NEA has forced us to reduce some of our readyprint rates in order to save the business and this is particularly true in the South. I hope we will have this under control to some extent from now on.

In conclusion, I hope it will be possible for the Syndicate to persuade at least some of the Hearst newspapers to turn over supplement printing to us. I am confident we will be able to save them money and also further strengthen our position in the supplement printing field.

Sincerely yours,

F. J. NICHT.

F. J. NICHT.

FJN:ML
3042

[P-14 for ident., P-14 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

KING FEATURES SYNDICATE,
235 East 45th Street,
New York 17, N.Y.,
Tel. MUrray Hill 2-5600,
Cable Address Kingsyn, N.Y.,
January 19, 1954.

To: Ward Greene.

From: F. J. Nicht.

DEAR MR. GREENE: I am looking forward to talking with you about several matters, especially our readyprint business, but

meanwhile there is a thought or two I'd like to commit to writing.

I hope I am right in thinking that we have absorbed most of the shock in connection with our readyprint business. We have lost some business in this field unavoidably such as the two NOVEL A WEEK runs in Newark and Harrisburg. We have had to reduce some rates and our readyprint costs have gone up and will probably go up still further shortly.

Lacking certain support which I think should have been given to us, I have, as you know, been able to make a sort of an unofficial arrangement with Greater Buffalo Press which, up to this point, has worked to our advantage as well as theirs. For example, they got the run of the Utica Observer-Dispatch, a Gannett newspaper, and we got the Binghamton PRESS run, also a Gannett newspaper. In this respect the arrangement has worked out even better than I thought and it seems to be working out in other directions also.

Now, I would like to again bring up the possibility of purchasing International Color Printing Company. Heretofore we have been thinking in terms of a million dollars or so, but I have a hunch that if we offered them \$500,000, it is possible we might get somewhere. That certainly isn't a lot of money and if it were still a bit more, it wouldn't be a lot of money. Furthermore, it would seem that the purchase price might be spread over a period of years.

I think it would also be wise for the Syndicate to think about the possibility of getting hold of Acme Color Printing Company at San Bernardino.

Sincerely yours,

F. J. N.

F. J. NICHOL.

FJN:ML

3043 [P-15 for ident., P-15 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

THE GREATER BUFFALO PRESS INC.,
302 Grote Street
Telephone BEdford 6410
Web Press Color Printing,
Buffalo 7, New York, June 2, 1955.

Mr. F. J. NICHT,
King Features Syndicate,
235 E. 45th St., New York City.

DEAR FRANK: These are the points discussed in New York on which we agreed could go into a contract, between King Features Syndicate and Greater Buffalo Press, Inc.

1. Greater Buffalo Press, Inc., will purchase International Color Printing Company, and assume a printing contract which is presently being negotiated between International Printing Company and King Features Syndicate.

2. In a contract which King Features Syndicate will negotiate with Greater Buffalo Press, Inc., the contracts and business which each company presently hold, will continue to be held by the same parties.

3. Greater Buffalo Press, Inc., will grant to King Features Syndicate, exclusive sales rights on all comic newspaper runs up to 200,000 copies, at a cost to be specified in the contract to be negotiated with International Color Printing Co.

4. Greater Buffalo Press, Inc. will grant exclusive sales rights to King Features Syndicate on all runs in excess of 200,000, with the exception of the Philadelphia Bulletin, and the Des Moines Register and Tribune. The cost to King Features Syndicate on runs of 200,000, is to be \$5.30 per M, with a reduction of one cent per thousand for every thousand above the 200,000 figure. The Greater Buffalo Press, Inc. will quote a price of \$5.42½ for a four page section to the accounts to which it seeks to sell comics.

5. In the plant which the Greater Buffalo Press, Inc., establishes at Lufkin, Texas, exclusive sales rights will be granted to King Features Syndicate with the exception of the Oklahoma City Times, and the Pappert Group of newspapers. The cost of

\$5.30 per M for a four-page section, on runs of 200,000 or more will apply to runs produced at the plant at Lufkin, Texas. For runs under 200,000, the Greater Buffalo Press, Inc., will prepare a schedule of prices which will be mutually acceptable to the Greater Buffalo Press, Inc., and King Features Syndicate.

6. The Greater Buffalo Press, Inc., is to be the exclusive Printer for King Features Syndicate on runs of 200,000 or more, with the exception of such runs as King Features Syndicate now is contracting to other parties. At the expiration of these contracts, the Greater Buffalo Press, Inc., is to become the exclusive Printer. Contracts with International Color Printing Company are excluded from this provision.

7. The contract is to be for ten years.

8. A provision should be contained in the contract that the terms and conditions can be changed, by mutual consent, in matters of advantage to both parties.

9. Included in the contract, is to be the scale of wages presently paid, and a provision that the labor items included in the \$5.30 base price for a four-page section, are to be increased or decreased in proportion to the increase or decrease of labor costs. A like provision is to be made to compensate for an increase or decrease in the cost of newsprint.

I think this covers all the essential matters, and we are ready to go ahead with an arrangement based on these proposals.

Kindest regards,

GREATER BUFFALO PRESS, INC.,
J. W. Koessler
J. W. KOESSLER, *Pres.*

JWK/K

3045 for ident., P-16 in evid., H. T. Noel, Official Reporter,
U.S. District Court.]

THE GREATER BUFFALO PRESS INC.,
302 Grote Street
Telephone BEDford 6410,
Web Press Color Printing,
Buffalo 7, New York, June 13th, 1955.

Mr. FRANK J. NICHT,
King Features Syndicate,
235 E. 45 St.,
New York City, N.Y.

DEAR FRANK: These are the provisions on which we are in agreement, and which should be included in a contract between King Features Syndicate, and The Greater Buffalo Press, Inc.

1. The Greater Buffalo Press, Inc., will purchase International Color Printing Co., and assume a printing contract which is presently being negotiated between King Features Syndicate, and International Color Printing Company.

2. The Greater Buffalo Press, Inc., and King Features Syndicate will hold, and continue to hold such contracts and business as the Greater Buffalo Press, and King Features Syndicate presently have.

3. The Greater Buffalo Press, Inc., and International Color Printing Co., will grant King Features Syndicate exclusive sales rights on all new business with these exceptions:

1. The Philadelphia Bulletin
2. The Des Moines Register Tribune
3. The Oklahoma City Oklahoman
4. The Pappert Group of Newspapers

4. The cost to be charged King Features Syndicate for printing four color, standard size, comic newspaper supplements in individual runs of 200,000 or less, is the price provided in the contract between International Color Printing Co., and King Features Syndicate.

5. The cost to be charged King Features Syndicate by the Greater Buffalo Press, Inc., at its Buffalo and Dunkirk plants, for individual runs of four color, standard size, comic newspaper supplements is \$5.21 per M. The cost of additional thousands beyond the 200,000 figure is to be charged at the rate of \$4.67 per M.

3046 6. The cost to be charged King Features Syndicate by The Greater Buffalo Press, Inc., at its Lufkin, Texas plant for individual runs of 200,000 four color, standard size, comic newspaper supplements is \$5.15 per M. The cost of additional thousands beyond the 200,000 figure is to be charged at the rate of \$4.61 per M. The cost of individual runs of other quantities for standard size, four color, newspaper supplements at the Lufkin plant are:

175 M	\$5.23
add M's	4.61
150 M	\$5.34
add M's	4.61
125 M	\$5.47
add M's	4.61
100 M	\$5.50
add M's	4.61
75 M	\$5.69
add M's	4.61
50 M	\$6.05
add M's	4.61
25 M	\$6.77
add M's	4.61

A standard size newspaper comic page is $14\frac{1}{2}'' \times 21\frac{1}{2}''$. An individual run is one in which the makeup of each page is composed of new material.

7. In the event of an increase or decrease in the cost of labor, the labor items in the base prices are to be increased or decreased in the same percentage as the increase or decrease in the cost of labor. The labor items in the base prices are:

	200,000	
Makeready		\$.54
Press run		1.08
Packaging		.08
Total		\$1.70

	175,000	
Makeready		\$.62
Press run		1.08
Packaging		.08
Total		\$1.78

3047		150,000	
Makeready			\$.73
Press run			1.08
Packaging			.08
Total			\$1.89

1436

	125,000	
Makeready	-----	\$.86
Press run	-----	1.08
Packaging	-----	.08
Total	-----	\$2.02
	100,000	
Makeready	-----	\$.89
Press run	-----	1.08
Packaging	-----	.08
Total	-----	\$2.05
	75,000	
Makeready	-----	\$1.08
Press run	-----	1.08
Packaging	-----	.08
Total	-----	\$2.24
	50,000	
Makeready	-----	\$1.44
Press run	-----	1.08
Packaging	-----	.08
Total	-----	\$2.60
	25,000	
Makeready	-----	\$2.16
Press run	-----	1.08
Packaging	-----	.08
Total	-----	\$3.32

8. In the event of an increase or decrease in the cost of materials, the material items in the base prices are to be increased or decreased in the same percentage as the increase or decrease in the cost of materials. These material costs at Lufkin are:

Newsprint	-----	\$3.05 per M
Ink	-----	.40 per M

The newsprint cost is for 321b basis weight. The ink cost is for the standard ANPA colors of, yellow, red, blue, and black.

The items of labor costs at the Buffalo and Dunkirk plants are:

	200,000	
3048 Makeready	-----	\$.54
Press run	-----	1.08
Packaging	-----	.08
Total	-----	\$1.70

A schedule of present labor rates is to be attached and made part of the contract.

The items of material costs at the Buffalo and Dunkirk plants are:

Newsprint	-----	\$3.11
Ink	-----	.40

9. For the period of this contract, The Greater Buffalo Press, Inc., will contract to print newspaper supplements only for such accounts as it presently holds, and for such new accounts as it is privileged to negotiate and contract under this agreement, and for King Features Syndicate.

King Features Syndicate on its part will process all its contracts for printing four color, newspaper comic supplements through The Greater Buffalo Press, Inc., and International Color Printing Co. The exception to this provision is the contract which King Features Syndicate holds with the Dallas Times Herald. At the expiration of this contract, and at such time as King Features Syndicate can do so without business embarrassment, King Features Syndicate will process this printing at the Lufkin, Texas plant of The Greater Buffalo Press, Inc.

10. The provisions contained in paragraph No. 9 may be altered by mutual consent of The Greater Buffalo Press, Inc., and King Features Syndicate, where the interests of both parties are mutually served. Any and all provisions of this contract may be changed by mutual consent in the mutual interests of both parties.

11. The Greater Buffalo Press, Inc., will grant first option to King Features Syndicate to purchase the business of The Greater Buffalo Press, Inc., in the event The Greater Buffalo Press, Inc., offers its business for sale.

This contract is to be for a period of ten years.

Kindest regards,

GREATER BUFFALO PRESS, INC.,

J. W. Koessler

J. W. KOESSLER, *Pres.*

JWK/K

3049 [P-17 in evid., H. T. Noel, Official Reporter, U.S. District Court]

THE GREATER BUFFALO PRESS, INC.,
WEB PRESS COLOR PRINTING,
302 Grote Street,
Telephone BEdford 6410,
Buffalo 7, N.Y.
January 17, 1956.

MR. F. J. NICHT,
King Features Syndicate,
235 E. 45th St.,
New York, N.Y.

DEAR FRANK: I am returning second draft of the proposed contract.

The only thing I have changed is the exclusive commitments on the part of both parties.

Our attorneys tell us this is dynamite. However we consider the purpose and direction of our business relations shall be to secure to King Features and the Greater Buffalo Press the contracts and business which they presently hold and to aid and assist each other in securing such other business as is available—King Features to act as the selling agent and the Greater Buffalo Press as the Producer.

In this relation it may develop that the Greater Buffalo Press by mutual consent may be designated to act as negotiator or selling agent.

In such cases if the Greater Buffalo Press is successful in securing the account the Greater Buffalo Press will pay to King Features a minimum of 50¢ per thousand copies on the account thus secured.

Prices and wage scales will have to be adjusted to the increase in the price of newsprint and adjusted to the four percent labor increases we have been subjected to for the year of 1956.

Kindest regards,

(S) J. W. Koessler
J. W. KOESSLER,
President.

JWK:bv
Encl.

3050 [P-18 for ident., P-18 in evid., H .T. Noel, Official Reporter, U.S. District Court.]

THE GREATER BUFFALO PRESS INC.

WEB PRESS COLOR PRINTING,

302 Grote Street,

Telephone BEdford 6410,

Buffalo 7, N.Y.,

October 31, 1956.

Mr. F. J. NICHT,
King Features Syndicate,
235 E. 45th St.,
New York, N.Y.

DEAR FRANK: This, in substance, is the position of the Greater Buffalo Press Inc., as expressed at our meeting, Tuesday, October 23rd.

1. The Greater Buffalo Press will respect in every manner the comic printing accounts held by King Features Syndicate.
2. The Greater Buffalo Press will present King Features Syndicate with a competitive price, for its solicitation of new accounts.
3. The Greater Buffalo Press will share with King Features, in the manner it has in the past, in the benefits derived from new business, which it secures by solicitation on its own account.
4. Our definition of new business is that which no operator in the comic printing business presently holds.

Such an arrangement in my view protects King Features in its present holdings, gives the syndicate an even break in the securing of new business, and guarantees King Features a share in any business secured through the efforts of the Greater Buffalo Press.

Kindest personal regards,

(S) J. W. Koessler
J. W. KOESSLER,
President.

JWK:bv.

3051 [P-19 for ident., P-19 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

Memorandum:

JUNE 23, 1955.

During my telephone conversation with Mr. Koessler at Buffalo yesterday he advised me that Messrs. Gorman and Govin were due to be in Buffalo today.

It looks like a deal will undoubtedly be consummated. I made it clear to Koessler that whatever was done should be made with the understanding that the purchase is contingent on the outcome of the pending contract negotiations between KFS and GBP. Koessler was very frank in saying that he thoroughly understood.

I don't think any trouble will ensue but I would feel better if we had been able to close all agreements simultaneously.

FJN:mec

3052

[P-20 for ident., ——— in evid., H. T. Noel, Official Reporter, U.S. District Court.]

April 13, 1955.

3052 Memorandum:

These are the basic conditions on which a deal with GBP would hinge.

1) We must be exclusive sales agents. If we couldn't be the identity which we have had and preserved over the years would be destroyed and that's one of our greatest assets. It might be that Greater Buffalo's identity with their existing clients could be preserved, but not even this is certain. If this fundamental couldn't be agreed to there would be little sense in our going any farther. GBP, of course, might hold the right to sell commercial printing or booklets if it has or wants any of this work.

2) We should have a fixed printing rate per thousand. I don't like the idea of "continuing as we have." Let's have a per thousand printing rate which is fixed. Let's call it \$5.23 or \$5.13, whatever we can agree on. Maybe there would have to be some special charges on smaller runs. Details in this connection could easily be worked out. If GBP can print for us at little over \$5 per thousand now and they do, then on the acquisition of 30

million four's they ought to do as well, or better, but we must recognize in all fairness the extra cost in printing small runs.

I see no logic in any understanding concerning new printing on the basis of 50 cents per thousand based on circulation instead of on a 4-page standard size unit basis.

Koessler ought to save money if we were his sales agent. He wouldn't need a Chicago office, if he has any. Billing and everything would be simplified and he'd save travelling expense and too many other items to mention.

3) The contract, if we can agree on fundamentals should be for a long term, not less than 10 years.

Koessler ought to be impressed with the fact that we have important possibilities to offer. For example, there is the printing with Comic Weekly and the establishment of a Coast printing station. He would also acquire our proposed southern plant.

Combinations such as we have in mind probably would make it possible for us to obtain increases in printing prices for him such as St. Louis, Kansas City, Cleveland, etc.

3053 If this whole thing falls through then we would either continue our friendly contacts, but we would be competitors and there is always the danger of a price war which would probably be more disastrous to him than it would be for us as he has undoubtedly lost some business lately. Koessler conceivably could look forward to a gross business running from 30 to 35 million dollars annually.

Why is he so difficult to reach?

What happened to his AP printing?

Why does he stir things up in Texas?

FJN:mec

3054 [P-21 for ident., in evid., H. T. Noel, Official Reporter, U.S. District Court.]

MARCH 25, 1955.

To Ward Greene

From: F. J. Nicht

DEAR MR. GREENE: Developments affecting our readyprint business have now reached the point where I deem it advisable to summarize what has happened, and is likely to happen.

As I see it, this is about how it stacks up:

1. KFS can continue to go on under its present arrangement with International Color Printing Company.

2. KFS (or the Hearst organization) can buy out International Color Printing Company.

3. International Color Printing Company can sell out to Greater Buffalo Press, or for that matter someone else.

Regarding No. 1:

If the Syndicate elects to continue with International Color Printing Company on much the same basis as in the past, it would undoubtedly involve an increase in our printing cost because ICP insists they could not agree to continue printing for us at the present rate. They claim they could not do so except under a new long-term contract and would have to have an increase in their printing rate, particularly if they were obliged to establish a southern printing plant. This latter has been pretty well agreed to inasmuch as the Hearst organization has signed a long-term contract with the Coosa River people based on newsprint consumption for the printing of comic supplements at a southern printing plant, most likely to be established in Alabama.

An increase in our printing rate on the basis of continuing with ICP could cost the Syndicate anywhere from \$50,000 to \$100,000 annually, or even more.

The establishment of a southern printing plant would probably necessitate an eventual capital expenditure of from \$600,000 to \$800,000.

3055 Regarding No. 2:

If International Color Printing Company were to be purchased by the Hearst interests it could probably be done at a price of approximately \$635,000, spread perhaps over a ten year period. This procedure might save the Syndicate money because we would eliminate a second profit, that of the present producer, namely ICP. In this connection it should be borne in mind, however, that a further expenditure would be necessary for the establishment of a southern printing plant, and as indicated above, this might involve \$600,000 to \$800,000.

Regarding No. 3:

Greater Buffalo Press is prepared to purchase International Color Printing Company and the price would be approximately \$635,000. If this were to occur, then it would be highly important that KFS be thoroughly protected. This protection might be accomplished through a long-term selling contract with Greater Buffalo Press. Under such a contract, KFS should be

assured of the continuation of its selling identity and of the continuation of control of existing readyprint business.

In this statement I am not intending to over-simplify the working out of details. At the moment, I am dealing with principles only. Many details would have to be worked out, such as preservation at least of present costs, protection of our direct client relations, an understanding regarding new business procedures, etc.

The owners of International Color Printing Company are now quite definitely anxious to sell. They can hardly sell without our consent and cooperation. We have had many meetings among ourselves and with the representatives of ICP and Greater Buffalo Press. These meetings have up to this time involved the overall principles and not the many details.

The time has now come for us to decide what we want to do. If management prefers a carrying out of plan No. 3, I am prepared to proceed if given a green light. Even in this event, there is a possibility of encountering opposition in the effort to protect the interests of KFS on every conceivable point under a long-term selling contract with the prospective owners.

Greater Buffalo Press realizes they can hardly continue purchase plans without the approval of KFS and Greater Buffalo Press has indicated they would like to talk further with me about this quite conclusively next week.

I shall await further instructions.

Sincerely yours,

FJN:mec

F. J. NICHT.

3056 [P-22 for ident., P-22 in evid., H. T. Noel, Official Reporter ,U.S. District Court.]

JULY 21, 1954.

Memorandum:

Mr. Greene and I met with Mr. Berlin in his office yesterday and also present were Mr. Gortatowsky and Mr. Muller.

We outlined the status of the readyprint field as we size it up at present and expressed our opinion as to what was likely to happen. The matter was gone into rather exhaustively.

Mr. Berlin repeated what he had told us before—that he thought it would be a mistake for us to own our own supplement printing plant, that it would be better for us to continue as a selling agent.

I outlined at some length what had been happening in the southwest and what is likely to happen in the south. I pointed out what Greater Buffalo proposed to do at a Lufkin, Texas plant. I pointed out in chart form just what our southern business meant in dollars and cents, gross and net. I expressed the feeling that if we didn't go into the south with a plant strategically located perhaps at Coosa River, or some nearby point that some competitor probably would go in and if we were beaten to the draw a high percentage of our readyprint business, about 25%, would be under threat. I believe I succeeded in having those present share the same feeling.

The question of using idle Hearst presses came up again, of course, but I said that this was something for Mr. Gorman to decide, that it was very likely he had his own equipment plans and would probably move some of it from Wilkes-Barre to a new plant if he got one.

I think the figures I submitted concerning our total readyprint gross and net made a big impression for Mr. Berlin, referring to our net in the southern business, said that was something that had to be protected.

I made a point of the fact that a southern printing station would not only be a protection for our present business but there might be possibilities for expanding with new business also. Stressed the point that I believe the tendency in the supplement printing field was in the direction of decentralization of plants.

There was quite some discussion regarding the purchase of International Color Printing Company and this led Mr. Berlin to point out that he thought Cuneo might be interested in taking ICP over and I mentioned the possibility of other printers being interested in ICP but if anything were brought about along that line, it should only be done on a basis where KFS would be in a position to control the newspaper accounts, as it does at present and as it has always done.

We discussed the relative merits of the various readyprinters and there was a feeling that ICP during recent years hadn't been as progressive as it should have been and that their plant facilities did not yield the flexibility that other printers, notably Greater Buffalo possessed. I stated that Mr. Gorman had recently made a survey in the south, visiting newsprint mills and that he was making a report that should be in any day.

Mr. Berlin seemed to feel that either we or ICP did not press the possibility of a New Orleans plant which was under discussion sometime ago, to a conclusion.

3057 I acquainted the gentleman present with what I had been able to do in making deals with competitive printers such as Greater Buffalo Press and Wilmington, Delaware; that I had reason to believe that World Color might join with us in the same kind of a deal. I explained the nature of our deal with Greater Buffalo in connection with their proposed Lufkin plant. I also expressed grave concern over the re-entry of World Color at St. Louis in the newspaper supplement printing field; that they had taken four runs from us and would undoubtedly become increasingly active.

When the question came up as to what ICP had to sell, I expressed the opinion that they had nothing to sell except physical equipment—that we took their output exclusively and that we control them lock, stock and barrel. Mr. Berlin wanted to know at what price I thought ICP might be purchased and I guessed the price might be $\frac{1}{2}$ or $\frac{3}{4}$ million. Mr. Berlin thought that that might be high because ICP's most important asset was its contract with us. At that point I pointed out that we had only a six months' contract with ICP and that if they were to expand on their own they would undoubtedly want a long term contract and there appeared to be general agreement that the making of such a long term contract would be desirable if ICP was ready to go ahead with expansion plans.

I brought up again the matter of lack of willingness on the part of ICP to expand heretofore because the owners didn't want to put up any more capital. If ICP is going to need capital, I gather that this might be forthcoming in some sort of way, not yet determined upon.

Before the meeting broke up it was definitely agreed that we would have another meeting, Wednesday, July 28. I am to arrange for Mr. Gorman to be present. Messrs. Berlin, Gortatowsky and Muller will also be present.

* * * * *

Notes for FJN

Up to this point it seems to me Mr. Gorman has made expansion considerations too difficult. Greater Buffalo stole a march on us, if their plans go through, by acting rapidly and directly with the Lufkin newsprint mill.

Personally, I'm afraid to see Cuneo in this picture.

Acquaint Mr. Gorman with what we have just done with respect to Fort Worth and Dallas **TIMES HERALD**.

Call Mr. Gorman's attention to Bowater plant in Tennessee. Could some kind of a deal be made with them? Isn't it likely that other printers are likely to see the possibilities in making a deal with Bowater?

We must pin down ICP to something definite. It seems to me that if a southern printing plant appears to be as advantageous as even Mr. Gorman thinks, that that would be the best way to solve our present problem—this rather than a change of ownership in ICP. The latter is likely to confuse our over-all problems at this juncture.

3058 I suppose one way in which to encourage ICP to open up a southern plant would be to arrive at an advantageous printing price with them. They will have the advantage of lower newsprint cost and there will be substantial transportation savings.

Maybe a southern plant would make it possible for ICP to consider the abandonment of the Peoria plant.

We must keep in mind the "Richmond differential difficulty."

Bear in mind Mr. Gorman's remark in his report of July 3—"I have no doubt that if we have a reasonably long contract with King Features and are reasonably certain of a fair profit, we should be able to obtain financing without too much difficulty."

Brief Mr. Gorman on what transpired at our meeting yesterday so that what he may have to say will not be contradictory in any way.

If the Kansas City STAR has stock in Coosa River plant, maybe they would like to have us print their supplements, but here we will have to be careful inasmuch as the STAR supplements are now printed by Greater Buffalo.

Can Mr. Gorman give me any further information regarding the rumor that Greater Buffalo Press is running into difficulties with the proposed Lufkin plant?

FJN:mec

3059 [——— for ident., P-23 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

AUGUST 19, 1955.

Mr. FRANK J. NICHT,
King Features Syndicate,
235 East 45th Street,
New York 17, N.Y.

DEAR FRANK: Attached are three signed copies of agreement dated July 30th. I presume you will sign and return one copy for our files.

I would like to point out that in Section "A" of Article 7, Exhibit "A" is referred to as being dated "June 16, 1955." Although the rate in Exhibit "A" are those which were in effect June 16, 1955 this Exhibit is not actually dated. The following rates have gone into effect between June 16, 1955 and July 30, 1955, the actual date of the Agreement. These rates are not included in the original Exhibit "A" but should now be included and made part of the Rate Schedule:

Greenville, S.C., News—10-Page standard size section, two releases printed at one time, \$0.4058 per thousand four page standard size sections over contract.

Greenville, S.C., News—10-Page standard size section, one release double-plated, \$0.4058 per thousand four page standards over contract plus \$150, per printing.

Jackson, Miss., State Times—8-Page standard size comic section, \$50. per release over contract.

Norfolk, Va., Virginian Pilot—14-Page standard size section, one release double-plated, \$0.8261 per thousand four page standards over contract.

Norfolk, Va., Virginian Pilot—14-Page standard size sections, two releases printed at one time, \$0.1761 per thousand four-page standards over contract.

Regarding the handling of the Southern Transportation allowances, amounting to \$500.12 per week, which we at present allow on the weekly Wilkes-Barre Transportation invoice and is to cover transportation advantage which would have resulted from our establishing a Richmond plant. Under present contract schedule, we are billing King Features Syndicate for the first ten million printed a total of \$53,930.50. In order to take care of the Southern Transportation allowance, we will reduce

this amount by \$500.50 so that we will bill the first ten million at rate of \$5.3430 per thousand four page standards or a total of \$53,430.00. This is the rate which we show in Exhibit "A" and which is part of the new contract. When you have returned copy of signed contract to us, we will begin billing the first ten million at rate of \$5.3430 and will then discontinue allowing the \$500.12 on the transportation invoice.

Sincerely yours,

JOSEPH J. GORMAN.

3000 **AGREEMENT**, made this 30th day of July, 1955, at the City of New York, State of New York, between **KING FEATURES SYNDICATE**, Division of the Hearst Corporation, hereinafter called, "Syndicate", and **INTERNATIONAL COLOR PRINTING COMPANY**, hereinafter called "International."

First: The term hereof shall be for a period of ten years beginning on the 31st day of July, 1955, and shall thereafter renew itself for like periods unless either party notifies the other by registered letter at least two years before the end of any of said periods of its desire to terminate this agreement.

Second: International, at its plants in Wilkes-Barre, Pennsylvania or Peoria, Illinois, or at other plants which may later be operated by it, will print and prepare for shipping to the various clients designated by the Syndicate those quantities of colored supplements as the Syndicate may order. The total of such supplement printing shall be a minimum of seventy five per cent of the Syndicate's supplement printing requirements, except as provided in Paragraph SIXTH, or when both parties agree mutually to a lower minimum. All supplement pages will be printed with four colors, or less, as designated by the Syndicate. For the purpose of this agreement it is understood that a standard size page is fourteen and one half ($14\frac{1}{2}$) inches by twenty-one and one half ($21\frac{1}{2}$) inches when printed on Hoe presses and fourteen and one half ($14\frac{1}{2}$) inches by twenty-one and five eighth ($21\frac{5}{8}$) inches when printed on Goss presses.

Third: The Syndicate will supply, or cause to be supplied, to International the necessary matrices, or acceptable substitutes therefor, for the printing of comic supplements hereunder. International will print supplements in a proper and workmanlike manner satisfactory to the Syndicate, and will start printing as soon as practicable after receipt of matrices for such printing. The supplements hereunder will be printed from the least num-

ber of comic page matrices possible, however, the Syndicate will determine the pages composing makereadies. International will print comic pages and advertising pages comprising supplements, from the aforesaid matrices, only in accordance with instructions received from the Syndicate. International will

3061 deliver the supplements to a carrier designated or approved by the Syndicate, at the plate of printing, directed to the client and sufficiently in advance of release date, as practicalities such as arrival of mats, mechanical difficulties and desires of the client will allow, to permit time of arrival as designated by the Syndicate.

Fourth: While International is printing at least the minimum percentage of Syndicate's supplement printing requirements as outlined in Paragraph Second above, International agrees that it will not produce or print comic supplements for any organization other than the Syndicate, and in no event without the written consent of the Syndicate.

Fifth: Should any dispute arise between the parties hereto, which cannot be resolved through discussions between the parties, it will be submitted to arbitration in accordance with the arbitration rules of the State of New York. Anything in such arbitration rules of the State of New York notwithstanding, the arbiters shall consist of two chosen by International, two chosen by Syndicate and a Chairman to be chosen by the other four arbiters, and the decision of said arbiters is to be final and binding upon both parties.

Sixth: The parties hereto shall be excused from total or partial performance hereunder because of, and for the duration of strikes, fire damage, accidents, acts of God, unavailability of transportation facilities, shortage of newsprint, or other causes beyond their control whether or not of the same class or character making performance or partial performance hereunder impossible.

Seventh: For the duration of this agreement rates for the various printings and related matters shall be as following set forth:

3062 A. All printings covered by this agreement shall be paid for in accordance with the established attached Rate Schedule marked Exhibit "A", dated June 16th, 1955, which is made a part hereof and that weekly settlement of the obligations between the parties hereto shall be had based thereon. International will supply the Syndicate with

a copy of all new labor agreements within fifteen days after signing by both International and union officers.

B. The rates for all new and additional printing placed with International after the effective date of this agreement shall be determined by agreement between the two parties.

C. Should any print order hereunder be changed in a degree which would affect production cost of such printing, new rate for such printing shall be determined by agreement between the two parties.

D. Various prices per thousand four page supplements are based upon the present contract price to International for newsprint of \$6.35 per hundred weight, or \$127.00 per ton delivered at printing station, for 32 pound basis weight newsprint paper, 29 inches wide, and it is expressly agreed and understood that the price of such supplements shall be readjusted in direct proportion, either upward or downward, as the price of newsprint sold under contract to International shall increase or decrease. All newsprint waste, based on International's experience, shall be included in calculating newsprint cost per thousand supplements. Exceptions to the above paper size, type of newsprint and basis weight are indicated opposite the newspapers listed in Exhibit "A" and the charge to the Syndicate therein set forth.

E. The Rate Schedule in Exhibit "A" may be opened for adjustment once each year, such adjustment to become effective January 15, of that year, provided notice of desire to make such adjustment is given by either party to the other not later than October 14, of the year preceding the January 15th on which it is desired to make adjustment. Otherwise the existing Rate Schedule shall continue in effect for another year. Increased costs, or savings, due directly to changes in terms of labor contracts will be passed on to the Syndicate by International and evidence of same must be presented in the form of labor contracts and labor cost figures. Changes in rates resulting from causes other than changes in labor contracts must be agreed upon by the two parties, it being understood that no part of savings resulting from improved methods and machinery need be passed on by International to Syndicate until the cost of improved machinery has been fully amortized.

F. The provision of sub-division "E" in no way supersedes the provision of sub-division "C".

Eighth: This agreement supersedes all previous contracts between the parties hereto, and contains all of the agreements and understandings of the parties with respect to the subject matter hereof. Any amendments or supplements hereto shall be in writing and signed by the parties hereto before becoming effective.

IN WITNESS WHEREOF The International Color Printing Company has caused this agreement to be executed by Joseph J. Gorman its President, and The Hearst Corporation, King Features Syndicate Division by Frank J. Nicht its General Sales Manager.

Witness:

(S) **RAYMOND K. ROGERS**

KING FEATURES SYNDICATE,

DIVISION OF THE HEARST CORPORATION,

By (S) **FRANK J. NICHT**

THE INTERNATIONAL COLOR PRINTING COMPANY,

By (S) **JOSEPH J. GORMAN, Pres.**

Witness:

(S) **JOSEPH T. CLINTON**

3064

JUNE 16, 1955.

EXHIBIT "A"

RATE SCHEDULE

In accordance with the provisions of Paragraph SEVENTH, Subdivision "A", to agreement between King Features Syndicate and International Color Printing Co. dated the 30th day of July, 1955, the following rates shall apply for each one thousand four-page standard size supplements, or equivalent, printed, wrapped and labeled ready for shipment f.o.b. printing station:

The first 10,000,000 four-page standard size sections, or equivalent, \$5.3430 per M.

Over 10,000,000 (excluding Mirror and booklets) four-page standard size sections, or equivalent, \$5.2989 per M.

New York Mirror (using 57½" newsprint rolls) four-page standard size sections, or equivalent, \$4.9108 per M.

Western Printing Company booklets (using 60" newsprint rolls) four-page standard size sections, or equivalent \$5.4043 per M.

It is mutually agreed that extra charges and/or allowances as listed herein will apply on the following printings:

Akron, Ohio, Beacon Journal—16-page standard size section—\$.05 per thousand four-page standards under contract.

Andalusia, Alabama, Covington Dispatch—8-page tabloid section—\$5.00 per release over contract.

Artesia, N. Mexico, Advocate—8-page tabloid—\$5.00 per release over contract.

Binghamton, New York, Press—To insert Family Magazine section into comic section there shall be an additional charge of \$1.80 per M insertions. Also, there shall be an additional charge of \$10.00 per release for transporting magazine sections from railroad station to plant.

Birmingham, Alabama, News—10-Page standard sections—\$.4058 per M four-page standards over contract.

3065 Birmingham, Alabama, News—14-page standard sections printed two releases at one time—\$.8664 per M four-page standards over contract.

Bluefield, W. Va., Telegraph—12-page standard size section—\$5.00 per release over contract.

Canton, Ohio, Repository—10-page standard sections, two releases printed at one time—\$.4058 per thousand four-page standards over contract.

Canton, Ohio, Repository—8-page standard sections printed bookfold, two releases at one time—\$30.00 per release over contract.

Charleston, W. Virginia, Gazette—10-page standard sections, printed two releases at one time—\$.4058 per M four-page standards over contract.

Charleston, S.C., News & Courier—8-page standard sections printed bookfold, two releases at one time—\$30.00 per release over contract.

Charleston, S.C., News & Courier—12-page standard sections—contract plus \$40.00 per release.

Charlotte, N.C., Observer—\$.1104 per thousand four-page standards under contract.

Colorado Springs, Colorado, Free Press—8-page standard size section—\$5.00 per release over contract.

Greenville, Tenn., Daily Sun—4-page standard size section—\$5.00 per release over contract.

Greenville, S.C., News—12-page standard—\$25.00 per release over contract.

Hereford, Texas, Brand—8-page standard size section—\$5.00 per release over contract.

Houston, Texas, Post—12-page standard—\$.2564 per thousand 12-page standards under contract.

Houston, Texas, Post—16-page standard—\$.7352 per thousand sixteen-page standards under contract.

Huntington, W. Va., Herald Advertiser—10-page standards, two releases printed at once—\$.4058 per thousand four-page standards over contract.

3066 Garden City, New York, Newsday—8-page tabloid sections—\$.10 per thousand four-page standards under contract.

Grand Rapids, Michigan, Herald—\$.10 per thousand four-page standards under contract.

Ironton, Ohio, Tribune—8-page standard sections—\$37.00 per release over contract.

Jamaica, New York, Long Island Press—12-page standards—On the first 200,000 circulation contract rate will apply. On circulation over the first 200,000 twelve-page standards, the rate will be \$1.2717 per thousand 12-page standards under contract.

La Cruces, N. Mexico, Sun News—8-page tabloid—\$5.00 per release over contract.

Lake Charles, La., American Press—8-page standard sections—\$15.00 per release over contract.

Lakeland, Florida, Ledger—8-page standard size sections—\$7.50 per release over contract.

Lexington, Kentucky, Herald Leader—12-page standards—\$31.61 per thousand four-page standards over contract.

Little Rock, Arkansas, Gazette—10-page standards, two releases printed at once—\$.3561 per thousand four-page standards over contract.

Macon, Georgia, Telegraph News—12-page standard sections—\$30.00 per release over contract.

McKeesport, Pa., D. News—8-page tabloid size sections—\$35.00 per release over contract.

Miami, Florida, Herald—16-page standard size sections—\$.05 per thousand four-page standards under contract.

Monroe, La., Star—8-page standard size sections—\$25.00 per release over contract.

Montgomery, Alabama, Advertiser—10-page standards, two releases printed at once—\$.4058 per thousand four-page standards over contract.

3067 Montgomery, Alabama, Advertiser—10-page standards, one release. Contract plus \$300 per printing.

Montgomery, Alabama, Advertiser—12-page standards. Contract plus \$25.00 per printing.

Morehead City, N.C., News Times—8-page tabloid sections—\$5.00 per release over contract.

Mt. Pleasant, Texas, Times—8-page tabloid—\$5.00 per release over contract.

New Albany, Indiana, Ledger & Tribune—8-page tabloid sections—\$5.00 per release over contract.

Newark, New Jersey, Star Ledger—12-page standards—\$.2839 per thousand four-page standards under contract.

New Bedford, Mass., Standard Times—10-page standards, two releases printed at once—\$.4058 per thousand four-page standards over contract.

New Bedford, Mass., Standard Times—8-page standards—\$.20 per thousand 8-page standards under contract.

Orangeburg, S.C., Democrat—8-page standard sections—\$10.00 per release over contract.

Orlando, Florida, Star—12-page standard sections—\$45.00 per release over contract.

Paducah, Kentucky, Sun Democrat—8-page tabloid sections—\$5.00 per release over contract.

Pensacola, Florida, Journal—8-page standard sections—\$7.00 per release over contract.

Philadelphia, Pa., Mayfair Times—8-page standard sections—\$2.50 per release over contract.

Pittsburgh, Pennsylvania, Sun Telegraph—Using 58½" newsprint rolls—\$.1258 per thousand four-page standards under contract.

Pittsburgh, Pa., Sun Telegraph—Special Makeready charge of \$190 per release over contract.

3068 Raleigh, N.C., News & Observer—10-page standard sections, two releases printed at once—\$.1461 per thousand four-page standards over contract.

Raleigh, N.C., News & Observer—10-page standards, for printing one release—\$.3961 per thousand four-page standards over contract.

Reading, Pa., Eagle—Tabloid magazine section printed on special premium newsprint—\$1.67 per thousand four-page standards over contract.

Richmond, Va., Times Dispatch—Newsprint adjustment charge—\$.025 per thousand four-page standards over contract.

Richmond, Va., Times Dispatch—14-page standards, for printing one release—\$.8261 per thousand four-page standards over contract.

Richmond, Va., Times Dispatch—14-page standard sections, two releases printed at once—\$.3725 per thousand four-page standards over contract.

Roanoke, Va., Times—10-page standard size sections—\$.4058 per thousand four-page standards over contract.

Rockford, Illinois, Star—10-page standards, two releases printed at once—\$.60 per thousand four-page standards over contract.

San Antonio, Texas, Light—20-page tabloid sections—\$.4058 per thousand four-page standards over contract plus an additional \$75.00 per printing.

San Antonio, Texas, Light—12-page tabloid sections—Contract plus \$75.00 per printing.

Shreveport, La., Times—\$.05 per thousand four-page standards under contract.

Silver City, New Mexico, Press—8-page tabloid sections—\$.50 per release over contract.

Tacoma, Washington, News Tribune—12-page standard sections—Contract plus \$50.00 per release.

Texas Quality Group—\$20.00 per release over contract.

Tulsa, Oklahoma, World—16-page standard size sections—\$.15 per thousand four-page standards under contract.

3069 Tupelo, Miss., Journal—8-page standards—\$10.00 per release over contract.

Washington, D.C., Post Times-Herald—Using 57½" newsprint rolls—\$.3242 per thousand four-page standards under contract.

Wichita Falls, Texas, Times—8-page standard sections—\$24.00 per release over contract.

Wilmington, N.C., Star News—8-page standard sections—\$25.00 per release over contract.

Wichita, Kansas, Beacon—\$.155 per thousand sections under contract.

Havana, Cuba, Informacion—\$20.00 per release over contract.

Caracas, Venezuela, La Esfera—\$25.00 per release over contract.

Panama, Panama, American—\$15.00 per release over contract.

Hamilton, Bermuda, Mid Ocean News—\$20.00 per release over contract.

Caracas, Venezuela, El Nacional—Sunday and Thursday Issues—\$16.50 per release over contract.

Caracas, Venezuela, El Nacional—Thursday Issue—\$.25 per thousand four-page standards over contract.

3070 Additional charge of \$5.00 will be made for each color ad printed and \$2.50 for each black and white ad, except, there will be no charge for ad printings on the following runs other than as indicated:

Akron, Ohio, Beacon Journal
 Ashland, Ky., Independent
 Augusta, Ga., Chronicle
 Austin, Texas, American S.
 Binghamton, N.Y., Press
 Birmingham, Ala., News
 Canton, Ohio, Repository
 Cedar Rapids, Iowa, Gazette
 Charlotte, N.C., Observer
 Columbia, S.C., State
 Columbus, Ga., Ledger Enquirer
 Dayton, Ohio, News
 Fairmont, W. Va., Times
 Fort Wayne, Ind., News Sentinel
 Grand Forks, N.D., Herald
 Grand Rapids, Mich., Herald
 Greenville, S.C., News
 Harrisburg, Pa., Patriot News
 Hutchinson, Kansas, News Herald
 Houston, Texas, Post
 Jamaica, L.I. Press
 Joplin, Mo., Globe
 Jackson, Miss., Clarion Ledger
 Lewiston, Idaho, Tribune
 Lexington, Ky., Herald Leader
 Little Rock, Ark., Gazette

Lynchburg, Va., News
 Macon, Ga., Telegraph News
 Madison, Wisconsin, State Journal
 Marion, Ind., Chronicle
 Miami, Fla., Herald
 Montgomery, Ala., Advertiser
 New Orleans, La., Item
 Natchez, Miss., Democrat
 Newark, N.J., Ledger
 New Bedford, Mass., Standard Times
 Pittsburgh, Pa., Sun Telegraph
 Parkersburg, W. Va., News
 Port Arthur, Texas, News
 Raleigh, N.C., News & Observer
 Richmond, Va., Times Dispatch
 Roanoke, Va., Times
 St. Petersburg, Fla., Times
 San Antonio, Texas, Light
 St. Joseph, Mo., News Press
 Scranton, Pa., Scrantonian
 Springfield, Ohio, News Sun
 Tacoma, Washington, News
 Terre Haute, Ind., Tribune
 Topeka, Kansas, Daily Capital.
 Tulsa, Okla., World
 Washington, D.C., Post Times-Herald
 Wheeling, W. Va., News Register
 Wichita Falls, Texas, Times
 Wichita, Kansas, Beacon
 Wichita, Kansas, Eagle
 Winston Salem, N.C., Journal & Sentinel
 Waco, Texas, Tribune Herald

Only One Charge for Each Ad:

Orange, Texas, Leader
 Texas City, Texas, Sun
 Tyler, Texas, Telegraph Courier

Texas Group: Charge only on ads which run on a circulation total of less than 80,000.

General Group: Only one charge for each ad, as follows:

Bristol, Va., Herald Courier
 Clearwater, Fla., Sun

Gadsden, Ala., Times
Martinsville, Va., Bulletin
Spartanburg, S.C., Herald Journal
Tuscaloosa, Ala., News

3071 [P-24 for ident., P-24 in evid., H. T. Noel, Official
Reporter, U.S. District Court.]

SALESMEN'S BULLETIN No. 14243

AUGUST 23, 1955.

To All Salesmen.

Re: KFS—ICP—Greater Buffalo Press.

Greater Buffalo Press recently purchased International Color
Printing Company.

This is a very constructive step and one which we initiated
and encouraged.

International Color Printing Company's personnel will un-
doubtedly continue as in the past with Mr. Gorman in charge
and KFS will continue to function as the exclusive sales agent
for International Color Printing Company under a new long
term contract.

Best regards.

Sincerely yours,

F. J. NICHT.

FJN:mec

3072 [P-25 for ident., P-25 in evid., H. T. Noel, Official
Reporter, U.S. District Court.]

CONFIDENTIAL

AUGUST 17, 1955.

Mr. J. W. Koessler,
President, The Greater Buffalo Press, Inc.
302 Grote Street, Buffalo 7, New York.

DEAR WALTER: I'm sure you must have realized that with
the consummation of our different negotiations our contract
would very likely become of more and more frequent occurrence
and that's just the way it seems to be working out. Almost
every day situations and problems arise. Of course, I will try
not to bother you with any in which you are not directly
concerned.

Let me itemize some of the things that are in mind at present
and this will give you a rough idea.

I wrote you yesterday about St. Augustine, Florida and Wenatchee World.

Now we understand that Fargo, N.D., Forum has given NEA cancellation notice and the contract will expire in about a year's time. I believe you print a 10-page standard size section for them.

Situations such as this bring up again the matter of what to do about NEA. I think you and I are beginning to see eye-to-eye in this respect, but NEA is competition, and bad competition because they'll use anyone in the furtherance of their own interest. Consequently, I hope we can strike upon some plan which would make it possible for you to retain what NEA printing you have, but eliminate NEA in the process.

Take Fargo, for instance. Why shouldn't we make them a proposition based on your printing?

I had what I think is another worthwhile talk regarding Eastern and as things look now, maybe I'll be able to work things out. It may involve Portland, Maine and New Bedford and in the process we might get Greensboro.

I'm not sure, but I'm hopeful. In this connection, what are your thoughts about the Boston Post? If all of this can be worked out, our friends would be able to obtain increases on their present work which they are sorely in need of.

I would appreciate it if you could give me a list of the newspapers for which you are doing printing, not only in the States, but also Canada. We have what is undoubtedly a list of your clients, but I'd feel better if I had an authentic one from you. This will be useful to us in our sales contacts.

I received a rather disturbing reaction to that little piece that appeared in Editor & Publisher. I'll tell you about it when I see you. It disturbed this very important client because KFS was not mentioned and consequently he thought he had better get other propositions, I think I've straightened that out.

Will you please bring me up to date and specifically on the Houston Post by giving me the final price to us and transportation based on Lufkin printing. Recently you told me you figured Lufkin and Sylacauga would be underway in a year but would I be perfectly safe in saying that these plants will be in operation no later than November, 1956?

Don't you think it would be a good idea to have Jimmy Burns spend some time in Buffalo? I want to come up myself and will, but right now I don't know just when that would be.

All of this gives you a rough idea, doesn't it?
Best regards.

Sincerely yours,

F. J. NICH.

FJN:mec

3074 [P-26 For Ident., P-26 in Evid., H. T. Noel, Official
Reporter, U.S. District Court.]

THE GREATER BUFFALO PRESS INC.,

WEB PRESS COLOR PRINTING,

302 Grote Street,

Telephone BEDford 6410.

Buffalo 7, N.Y.,

August 22, 1955.

Mr. F. J. NICH,
King Features Syndicate,
235 E. 45th St.,
New York City.

DEAR FRANK: I told you on the phone of my conversation with Herb Walker and I think he is convinced that he is getting nowhere with his present operation.

I gather he is having trouble at St. Louis too. St. Louis realizing that there is no percentage in printing at the prices they are now charging N.E.A.

I think something will come of this in the next few weeks and abeyance from that source will be removed.

On the Eastern matter your proposed plan is O.K. with me if it is agreeable with Joe Gorman.

I do not think Eastern can touch our production cost on the Boston Post. In the next couple of months we will have our fine plate wide press operating and will be able to print a ten page section on EIGHT CYLINDERS using one roll.

Eastern with their equipment would have to use 20 CYLINDERS and use three rolls. If however the Boston Post continues to present a financial problem Eastern is welcome to it.

I will send you a list of our newspaper clients.

The cost of the Houston Post at Lufkin would be \$5.15 for a four page section on the basis of a 200,000 run. The transportation would be approximately 50¢ per hundred pounds.

The Post I understand has trucks going into Lufkin by which they would have their own sections.

I would be glad to have Jimmy Burns spend some time in Buffalo and acquaint himself with our operation.

Kindest regards,

J. W. Koessler, Br.

J. W. KOESSLER, *President.*

Extract "A" made for Houston Post follow-up. — 8/29/55
JWK: Br

3075 [P-27 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

OCTOBER 20, 1955.

THE GREATER BUFFALO PRESS, INC.,
302 Grote Street
Buffalo, New York

GENTLEMEN: This letter sets forth the agreement we have made with you with respect to our plant in Buffalo, New York, and the supplement printing now being done in that plant.

1. (a) We agree to sell to you and you agree to buy from us all the machinery, equipment, spare parts, supplies, furniture, fixtures and other tangible personal property (with the exception of one mat registering machine) located in our plant at 52-54 Carroll Street, Buffalo, New York (which we will call "our Buffalo plant") on the closing date specified in this agreement. We also agree to sell to you and you agree to buy from us all the newsprint paper and ink we have in storage at the Grant Terminal Warehouse, foot of Commercial Street, Buffalo, New York, on the closing date.

1. (b) For the above, you agree to pay us the sum of Twenty-Five Thousand Dollars (\$25,000.00) in cash, plus an amount equal to our cost on all newsprint paper in rolls, ink in drums, metal and supplies in our Buffalo plant and in storage for us at the Grant Terminal Warehouse, Buffalo, New York, on the closing date. The "closing date" under this agreement shall be January 14, 1956, or such other date as you and we may mutually agree upon. You shall take possession of our Buffalo plant on the closing date, and, on that date, pay us the sum of Twenty-Five Thousand Dollars (\$25,000.00). The amount remaining to be paid to us under Paragraphs 1 (a) and 1 (b) of this agreement shall be determined promptly after the closing date and paid to us when it is determined.

2. You agree to pay us the sum of *Three Hundred and Fifty Dollars* (\$350.00) per month from the closing date until our present lease on our Buffalo plant expires on July 1, 1956. You also agree to pay us the sum of *Six Hundred Twenty-five Dollars* (\$625.00) per month from the closing date until our present lease on storage space in the Grant Terminal Warehouse expires on June 1, 1956 or until we are able to effect an earlier termination of that lease.

3. We agree to turn over to you on the closing date all our supplement printing for the following named customers: NEA Service, Inc. of Cleveland, Ohio, a named customer which also places orders for the named customers shown in Appendix B; United Feature Syndicate, Inc. of New York, a named customer which also places orders for the named customers shown in Appendix C; United Press Associations of New York, New York, a named customer which also places orders for the named customers shown in Appendix D; The Chicago Daily News of Chicago, Illinois; the Columbus Citizen of Columbus, Ohio; The Indianapolis Times of Indianapolis, Indiana; The Knoxville News-Sentinel of Knoxville, Tennessee; The Evansville Courier-Press of Evansville, Indiana; and their respective successors and assigns (all of which we will call the "named customers").

4. You agree to do supplement printing on order from any or all of the named customers at your established schedule of rates (subject to the exceptions in special cases as set out in Appendix A hereto).

3077 4. (a) Your established schedule of rates is based upon a standard size eight-page supplement produced at your plant in either Buffalo or Dunkirk, New York, for which your present charges are: a \$216.00 plate and make ready charge for each eight-page standard supplement and a \$9.49 charge for printing each thousand copies of the eight-page standard supplement. The combination of these two charges gives the present total price for producing an eight-page standard supplement, F.O.B. printing plant.

4. (b) If supplements having more or less than eight standard size pages are produced, the price as specified above shall be adjusted in proportion to the increase or decrease in the number of pages.

4. (c) If tabloid supplements are produced, two tabloid sized pages shall be deemed the equivalent of one standard

sized page and the price as specified above shall be adjusted accordingly.

4. (d) The price specified above is based upon thirty-two pound basis newsprint of twenty-nine inch roll with at a price of \$125.50 (initialed by KLK and LEH) per ton, F.O.B. Buffalo, New York. If the price of newsprint increases or decreases, the price specified above for producing one thousand supplements shall be adjusted by the exact amount of the increase or decrease in the cost of the newsprint necessary to print such one thousand supplements. Should paper other than thirty-two pound basis or twenty-nine inch roll width be used for printing supplements hereunder, the price per thousand such supplements shall be adjusted by the exact amount of the increase or decrease in the cost of the paper necessary to print one thousand such supplements.

3078 4. (e) If you increase or decrease any of your rates for work similar to that covered by this agreement on account of an increase or decrease in costs other than for newsprint paper, such increase or decrease in rate shall apply to work thereafter done under this agreement to the extent, but only to the extent, that it applies to similar work done by you for customers not covered by this agreement. In brief, it is the understanding between us that you will do work for the customers named in this agreement at a price at least as low as that for which you do similar work for other customers.

4. (f) On ready print runs for more than one newspaper, changes shall be charged for at the rate of \$2.00 for each heading change and \$10.00 for each page change. Without your consent, page changes shall not exceed three for any one supplement.

5. Supplement printing under this agreement will be done at the one of your plants which has the most economical shipping charges for the particular newspaper for which the work is done, unless work is being done for a newspaper which receives a supplement which is part of a ready print run going to more than one newspaper, and, in that case, the printing shall be done at the one of your plants which has the most economically combined shipping and printing cost for that particular ready print run. Printing may be done now at either your plant in Buffalo, New York or your plant in Dunkirk, New York. Your new plants, now being constructed at Lufkin, Texas and Sylacauga, Alabama and any other plants which you may con-

struct or which may become available, shall be used for work under this agreement when such work can be advantageously produced at and delivered from any of those plants.

3079 6. In consideration of the supplement printing turned over to you under this agreement, you agree that you will pay us or our nominee an amount to be determined and paid as follows:

(a) For each 1,000 copies of any standard page size supplement produced by you for any of the named customers, you shall pay us the sum of \$.0625 multiplied by the number of pages in the supplement.

(b) For each 1,000 copies of any tabloid page size supplement produced by you for any of the named customers, you shall pay us \$.03125, multiplied by the number of pages in the supplement.

(c) You agree that each month (initialed by KLK and LEH) you will furnish us a statement in such reasonable detail as we may request, showing the work you have delivered under this agreement during the next preceding month. With each such statement you agree to pay us or our nominee the amount to which we are entitled under this agreement on account of work delivered by you during the next preceding week.

7. We procure our newsprint paper from The Scripps-Howard Supply Company and have been assured by that company that we can turn over to you at mill price 250 tons per month of newsprint in roll size of thirty inch or less during the year 1956 and 1957.

3080 8. This agreement shall continue in effect for ten years from the closing date and as long thereafter as your company or any successor, assign, affiliated or subsidiary company or any company in which either Mr. J. W. Koessler or Kenneth Koessler is associated or has a stock interest, continues to do supplement printing in the United States of America.

9. This agreement shall bind and benefit us and our successors and assigns. It shall bind and benefit you and your successors and assigns and affiliated and subsidiary companies and any company with which either Mr. J. W. Koessler or Mr. Kenneth Koessler is associated or in which either of them has a stock interest.

If the foregoing is satisfactory to you and correctly expresses your understanding of our agreement, will you please sign the enclosed copy of this letter and have that copy also signed by Mr. J. W. Koessler and Mr. Kenneth Koessler. If you will then return the signed copy to us, it will make a binding agreement between us.

Sincerely yours,

BUFFALO COLORPRESS, INC.

By /s/ L. E. HERMAN,

President.

/s/ HERBERT WALKER,

Vice-President.

The agreement set forth above is hereby accepted and agreed to this 22nd day of October, 1955.

THE GREATER BUFFALO PRESS, INC.,

By /s/ J. W. Koessler

/s/ J. W. Koessler

J. W. KOESSLER

/s/ Kenneth L. Koessler

KENNETH KOESSLER

APPENDIX A

The printing rates listed below will apply to some runs now in Buffalo Colorpress and are exceptions to the pricing schedule set forth in Paragraph 4(a)(b)(c) of the general agreement:

United Feature and United Press readyprint run, an eight-page tabloid section—

Five dollars and eighty-seven cents (\$5.87) per thousand, f.o.b. Buffalo, N.Y., plus Two dollars (\$2.00) for each heading change (black only) and Ten dollars (\$10.00) for each page change.

NEA readyprint run, an eight-page tabloid section—

Five dollars and twenty-five cents (\$5.25) per thousand, f.o.b. Buffalo, N.Y., plus Two dollars (\$2.00) for each heading change (black only) and Ten dollars (\$10.00) for each page change.

Poughkeepsie, Council Bluffs, Fort Worth run, a sixteen-page tabloid section—

Ten dollars and fifty-eight cents (\$10.58) per thousand, f.o.b. Buffalo, N.Y., plus Two dollars (\$2.00) for each heading change (black only) and Ten dollars (\$10.00) for each page change.

NEA readyprint run, an eight-page standard section—

Eleven dollars and sixteen cents (\$11.16) per thousand, f.o.b. Buffalo, N.Y., plus Two dollars (\$2.00) for each heading change (black only) and Ten dollars (\$10.00) for each page change.

Ponca City run, an eight-page tabloid section—

Nine dollars and fifty cents (\$9.50) per thousand, f.o.b. Buffalo, N.Y.

Trenton run, an eight-page standard section—

Eleven dollars and seventy-seven cents (\$11.77) per thousand, f.o.b. Buffalo, N.Y.

The charge to NEA for adding additional newspapers to these runs will be:

Eight-page tabloid runs—

Four Dollars and seventy-five cents (\$4.75) per thousand, f.o.b. Buffalo, N.Y., plus Two dollars (\$2.00) for each heading change (black only) and Ten dollars (\$10.00) for each page change. Page changes are not to exceed three, except by mutual agreement, in any one section.

3082 *Eight-page standard runs and sixteen-page tabloid runs—*

Nine dollars and forty-nine cents (\$9.49) per thousand, f.o.b. Buffalo, N.Y., plus Two dollars (\$2.00) for each heading change (black only) and Ten dollars (\$10.00) for each page change. Page changes are not to exceed three, except by mutual agreement, in any one section added to the present runs.

The payments to Buffalo Colorpress or its nominee as specified in Paragraph 4 of the agreement apply on the above runs.

3083

APPENDIX B

*Orders for the named customers below are placed by
NEA Service, Inc.*

Aurora (Ill.) Beacon News
Broken Bow (Neb.) Custer Co. Chief

Cheyenne (Wyo.) State Tribune
 Chillicothe (Ohio) Gazette
 Corbin (Ky.) Times
 Corinth (Miss.) Corinthian
 De Land (Fla.) Sun News
 Elizabethton (Tenn.) Star
 Elyria (Ohio) Chronicle Telegram
 Fort Pierce (Fla.) News Tribune
 Frankfort (Ky.) State Journal
 Gainesville (Fla.) Daily Times
 Griffin (Ga.) Daily News
 Harlan (Ky.) Enterprise
 Huntington (Ind.) Herald Press
 Joliet (Ill.) Herald News
 Kankakee (Ill.) Sunday Journal
 Kokomo (Ind.) Tribune
 Leesburg (Fla.) Commercial Ledger
 Lewiston (Mont.) News
 Laramie (Wyo.) Daily Bulletin
 McCook (Neb.) Gazette
 Melbourne (Fla.) Sunday Times
 Miles City (Mont.) Star
 Moundsville (W. Va.) Echo
 Norman (Okla.) Transcript
 Ocala (Fla.) Star Banner
 Pulaski (W. Va.) S.W. Times
 Rawlins (Wyo.) Daily Times
 Rock Springs (Wyo.) Miner
 Rome (Ga.) News Tribune
 Selma (Ala.) Times Journal
 Shelby (Ohio) Globe
 Spencer (Ia.) Times
 Suffolk (Va.) News Herald
 Sylvania (Ohio) Sentinel Herald
 Valdosta (Ga.) Times
 Worland (Wyo.) News
 Atlantic City (N.J.) Press
 Borger (Texas) News Herald
 Council Bluffs (Ia.) Nonpareil

Dothan (Ala.) Eagle
 Florence (Ala.) Tri Cities Daily
 Fort Lauderdale (Fla.) News
 Fort Myers (Fla.) News Press
 Fort Worth (Texas) Press
 Hammond (Ind.) Times
 Huron (S.D.) Plainsman
 Panama City (Fla.) News Herald
 Pensacola (Fla.) News Journal
 Ponca City (Okla.) News
 Poughkeepsie (N.Y.) New Yorker
 Sarasota (Fla.) Herald Tribune
 Trenton (N.J.) Times
 Zanesville (Ohio) Times Signal

3084

 APPENDIX C

*Orders for the named customers below are placed by
 United Feature Syndicate, Inc.*

Ada (Okla.) Evening News
 Artesia (N.M.) Daily Press
 Carlsbad (N.M.) Current Argus
 Durango (Col.) Herald News
 Farmington (N.M.) Times
 Gallup (N.M.) Independent
 Henry County Journal, Bassett, Va.
 Kinston (N.C.) Free Press
 Oregon City (Ore.) Banner Courier
 Pascagoula (Miss.) Chronicle Star
 Paterson (N.J.) Sunday Eagle
 Statesville (N.C.) Daily Record
 Poughkeepsie (N.Y.) New Yorker

3085 [P-28 for ident., P-28 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

NEA SERVICE, INC.,
1200 West Third St.,
Cleveland 13, Ohio,
October 20, 1955.

THE GREATER BUFFALO PRESS, INC.,
302 Grote Street,
Buffalo, New York

GENTLEMEN: This letter sets forth the agreement we have made with you with respect to new customers for supplement printing which we may hereafter secure for you.

1. You agree to do supplement printing on orders we secure for you either from or for the account of customers who are not now on your books. When any such order is secured by us and delivered to you, the customer and the successors and assigns of the customer from, or on whose account, the order was secured shall thereafter be known as and is hereinafter called "a new customer." You agree to keep a list of the new customers we secure for you and to confirm to us when each new customer is added to that list.

2. You agree that you will do supplement printing for the new customers at your established schedule of rates (subject to the exceptions, if any, in special cases as set out in Appendix A hereto).

2(a). Your established schedule of rates is based upon a standard size eight-page supplement produced at your plant in either Buffalo or Dunkirk, New York, for which your present charges are: a \$216.00 plate and makeready charge for each eight-page standard supplement and a \$9.49 charge for printing each thousand copies of the eight-page standard supplement. The combination of these two charges gives the present total price for producing an eight-page standard supplement, F.O.B. printing plant.

3086 2. (b) If supplements having more or less than eight standard size pages are produced, the price as specified above shall be adjusted in proportion to the increase or decrease in the number of pages.

2(c). If tabloid supplements are produced, two tabloid sized pages shall be deemed the equivalent of one standard sized

page and the price as specified above shall be adjusted accordingly.

2. (d) The price specified above is based upon thirty-two pound basis newsprint of twenty-nine inch roll width at a price of \$125.50 per ton, F.O.B. Buffalo, New York. If the price of newsprint increases or decreases, the price specified above for producing one thousand supplements shall be adjusted by the exact amount of the increase or decrease in the cost of the newsprint necessary to print such one thousand supplements. Should paper other than thirty-two pound basis or twenty-nine inch roll width be used for printing supplements hereunder, the price per thousand such supplements shall be adjusted by the exact amount of the increase or decrease in the cost of the paper necessary to print one thousand such supplements.

2(e). If you increase or decrease any of your rates for work similar to that covered by this agreement on account of an increase or decrease in costs other than for newsprint paper, such increase or decrease in rate shall apply to work thereafter done under this agreement to the extent, but only to the extent, that it applies to similar work done by you for customers not covered by this agreement. In brief, it is the understanding between us that you will do work for the new customers at a price at least as low as that for which you do similar work for other customers.

3087 2(f). On ready print runs for more than one newspaper, changes shall be charged for at the rate of \$2.00 for each heading change and \$10.00 for each page change. Without your consent, page changes shall not exceed three for any one supplement.

3. Supplement printing under this agreement will be done at the one of your plants which has the most economical shipping charges for the particular new customer for which the work is done, unless work is being done for a new customer which receives a supplement which is part of a ready print run going to more than one newspaper, and, in that case, the printing shall be done at the one of your plants which has the most economically combined shipping and printing cost for that particular ready print run. Printing may be done now at either your plant in Buffalo, New York or your plant in Dunkirk, New York. Your new plants, now being constructed at Lufkin, Texas and Sylacauga, Alabama and any other plants which you may

construct or which may become available, shall be used for work under this agreement when such work can be advantageously produced at and delivered from any of those plants.

4. In consideration of the new customers we secure for you and of the supplement printing you may do for those new customers, you agree that you will pay us or our nominee an amount to be determined as follows:

(a) For each 1,000 copies of any standard page size supplement produced by you for any new customer, you shall pay us the sum of \$.0625 multiplied by the number of pages in the supplement.

3088 (b) For each 1,000 copies of any tabloid page size supplement produced by you for any new customer, you shall pay us \$.03125, multiplied by the number of pages in the supplement.

(c) You agree that each month you will furnish us a statement in such reasonable detail as we may request, showing the work you have delivered to new customers during the next preceding month. With each such statement, you agree to pay us or our nominee the amount to which we are entitled under this agreement on account of work delivered by you during the next preceding week.

5. This agreement shall take effect on January 16, 1956, or such later date as you and we may mutually agree upon and continue in effect for ten years and as long thereafter as your company or any successor, assign, affiliated or subsidiary company or any company in which either Mr. J. W. Koessler or Mr. Kenneth Koessler is associated or has a stock interest, continues to do supplement printing in the United States of America.

6. This agreement shall bind and benefit us and our successors and assigns. It shall bind and benefit you and your successors and assigns and affiliated and subsidiary companies and any company with which either Mr. J. W. Koessler or Mr. Kenneth Koessler is associated or in which either of them has a stock interest.

3089 If the foregoing is satisfactory to you and correctly expresses your understanding of our agreement, will you please sign the enclosed copy of this letter and have that copy also signed by Mr. J. W. Koessler and Mr. Kenneth Koessler.

If you will then return the signed copy to us, it will make a binding agreement between us.

Sincerely yours,

NEA SERVICE, INC.
By FRED R. FERGUSON,
President.
HERBERT W. WALKER,
Vice-President.

The agreement set forth above is hereby accepted and agreed to this 22nd day of October, 1955.

THE GREATER BUFFALO PRESS, INC.
By J. W. KOESSLER
J. W. Koessler
J. W. KOESSLER
Kenneth Koessler
KENNETH KOESSLER

3090 [P-40 for ident., P-40 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

THE GREATER BUFFALO PRESS INC.,
WEB PRESS COLOR PRINTING,
302 Grote Street,
Telephone BEdford 6410,
Buffalo 7, N.Y.,
January 26, 1956.

MR. F. J. NICHT,
King Features Syndicate,
235 E. 45th St.
New York 17, N.Y.

DEAR FRANK: I don't think we can reasonably deny N.E.A. the privilege of doing business with their blood relatives.

The Greater Buffalo Press as the Greater Buffalo Press has been working in Memphis for the past five or six years and I know that if any change is made it will be kept in the family.

If however we get in the picture as printers we will see that King is cut in for something as much as we can squeeze out of it.

The alternative would be for N.E.A. to take the job to St. Louis which is too close for comfort.

It is these complications which make it so difficult to spell out a hard and fast formula.

It can be worked out however under the idea on which we are cooperating namely—each of us to hold what we have and to share with King any new business which is obtainable.

Kindest regards,

J. W. Koessler

J. W. KOESSLER,
President.

JWK:bv

copy attached to Memphis Commercial Appeal readyprint fu.
mec

3091 [P-52 for ident., H. T. Noel, Official Reporter, U.S.
District Court.]

Memo to: JOHN BOOTH

cc: Gerry, Tom, Vince, Bessie, Joe, Clinton, 3 ex.

On April 22nd I wrote a memo as follows, "As you now probably know the Southern plant situation has reached a climax with the decision of Greater Buffalo to put an operation in Texas. Vince, please tell about my conversation with Bloom and Nicht. Tom, tell what you heard about Texas."

Presume that Vince and Tom have both passed the information along.

"We may be hurt in one way and helped in another. We can't tell right now. I do know that it may be necessary for us to consolidate or move one plant to eliminate a lot of overhead. What we should do I don't know without considerable figuring. On next page are problems which must be answered:

1. Would it pay to eliminate Peoria and print everything in Wilkes Barre?
2. Would it profit us to leave Peoria and consolidate Wilkes Barre?
3. Would it pay to leave Wilkes Barre as is and move Peoria elsewhere?
4. Or would it be worthwhile to leave Peoria as is and move Parsons elsewhere?

Since we're undoubtedly going to lose considerable business on account of developments in Texas, one or maybe two of the

above moves may be necessary to reduce overhead to a minimum."

I believe that while I was in the South I wrote another memorandum along this same line but I am wondering if anyone else has started to do any figuring on any of the above propositions.

JOSEPH J. GORMAN.

NJR

NOTE: 11/15/54

WE MUST GET A COMPARISON OF TRANSPORTATION COSTS IMMEDIATELY. ——— J. J. G.

3092 [P-53 for ident. P-53 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

BIRMINGHAM, ALABAMA,

May 26, 1954.

REPORT ON POSSIBILITIES OF COLOR PRINTING PLANT IN OR NEAR BIRMINGHAM

I learned recently that the Coosa River Newsprint Company was planning expansion, so on my visit to Birmingham News I decided to go see the mill. I took a U-Drive-It car out there yesterday afternoon.

The Coosa River Newsprint Company was organized just prior to 1950. The stock amounts to about \$18,000,000.00 of which \$11,000,000.00 is owned by approximately 125 newspapers throughout the South, as well as several in the North, including the Kansas City Star. The balance, or about \$7,000,000.00 is owned by Kimberly-Clarke and I believe that this company has a long term management contract.

The mill is located at Coosa Pines, near Childersburg, about 40 miles outside of Birmingham. There is no population in Coosa Pines, and Childersburg is a comparatively small town. The president and general manager of the mill is Mr. Wakeman, formerly with Kimberly-Clarke and Spruce Falls. The sales manager, a Mr. Walph [sic] Watt, was also a Kimberly-Clarke man. He is a former president of Montclair and an old friend of Bob Sternberger.

For a long time we have been considering the possibility of a Southern printing plant, realizing that there would be considerable transportation saving for the southern newspapers which we now serve. On the other hand, the transportation saving may not be sufficient to offset the increase in overhead,—particularly in stereotyping.

We have made numerous studies to determine the saving in transportation, and also the cost of operating a plant, and we are now at the beginning of new studies along these lines. Up to this point we were faced with the necessity of paying a higher newsprint cost if the plant were to be located anywhere but on the coast. I believe the coast price per ton runs about \$127.00—the same as we are now paying in Pennsylvania. The interior price is \$131.00.

When the Coosa River Newsprint Company was established it was agreed that stockholder publishers could obtain newsprint in direct ratio to the amount of their stock holdings. Even now most of them are paying a very high price to the Canadian Mills because of long term contracts and cannot buy from Coosa River until the long term contracts have expired.

What is Coosa River going to do with the new capacity? It so happens that I dropped into the mill yesterday afternoon immediately following the annual stockholders' meeting. At this meeting it was decided that a \$3,000,000.00 expansion should be put into effect, giving an increase in capacity of from 30,000 to 40,000 tons by the end of a two year period. This is not to be done by means of new machinery but rather by improving present equipment. The Lufkin expansion of 70,000 tons is to be accomplished by the installation of new machinery, at a cost of \$15,000,000.00.

Some one told me two weeks ago that there might be a hitch in the arrangement between Greater Buffalo Press and Lufkin. Today, I heard more along this line. I was told by Mr. Watt that when the directors of Lufkin approved the expenditure of \$15,000,000.00, it was provided the mill would be able to 3093 sell the additional 70,000 tons. Mr. Watt tells me that so far they have not sold more than 28,000 tons, of which 15,000 tons were supposed to be used by Greater Buffalo. 15,000 tons represents about ten million four-page sections. Watt told me that so far Greater Buffalo has not been able to account for more than 5,000 tons, which would be something in the neighborhood of three million four-page sections.

He said Lufkin is rather badly in need of improved water supply, and while he has no way of knowing for certain, he thinks there is a possibility of a hitch.

Getting back to Coosa River. When I walked in yesterday afternoon, Mr. Wakeman and Mr. Watt looked rather surprised—especially in view of the fact that only a few hours earlier they had been talking about getting in touch with me. They are very definitely interested in having a color printing plant on their property. They purchased the ground from the Government, which has a large Ordnance Plant nearby. They would like to erect a building, and rent it to a color printing plant on a long term basis. I know that at yesterday's meeting they used the Birmingham News as an example of what could be saved in the way of transportation. As you probably know, Mr. Hanson is President of the Coosa River Paper Company, as well as publisher of the Birmingham News.

The present delivered price of paper from Coosa River to any plant in the South is \$125.50 as against \$127.00 which we are now paying. Mr. Hanson pays the same as Roy Roberts up in Kansas City. However, if a color printing company were located at Coosa Pines, the newsprint would be sold f.o.b. mill, for probably about \$120.00. As I said before, the cost along the coast is \$127.00.

I talked at length to Mr. Wakeman and Mr. Watt yesterday afternoon, and then arranged to meet the latter this morning. I told him that International Color is an independent organization but does practically all of King Features' work. I suggested a meeting between him and a representative of King Features, which he thought would be a good idea. Therefore, I am going to arrange a meeting between him and Mr. Nicht the week of June 21st.

The Board of Directors of Coosa River Newsprint Company will meet again in August, and Mr. Watt hopes at that time to be able to report progress on arrangement with some color printing company. He is going to see Walter Koessler the last week in June,—also Jim Darcey, of Eastern Color. He has had a long time contact with Darcey through the sale of Spruce Falls Paper.

When I gave him some idea of the names of King's customers he remarked that it is probable that we are selling at least seventy-five percent of the same customers as Coosa River, and

a view of the tonnage now used by International Color for southern newspapers, Coosa River would probably prefer to have an I.C.P. or a King plant on their property.

There are absolutely no pressmen or stereotypers in Coosa Pines, and I am not so sure that it would be easy to get the average pressman to live there.

After finishing with Mr. Watt today I talked to Clarence Hanson, and he is quite interested in the idea of King Printing in this neighborhood. He seemed to think that we would be able to pick up pressmen and stereotypers. Since Coosa Pines is only 30 miles from Birmingham, the chances are that Birmingham Union would control, so I asked Mr. Hanson to send me copies of his press and stereotype contracts.

When I leave here today I plan to go to the Bowater Mill, somewhere outside of Chattanooga. Between now and the time Mr. Watt comes to New York we will have to work up a cost schedule,—also a table showing transportation saving.

It may be that the owners of I.C.P. will not be interested in a southeastern proposition, but I am convinced that something will have to be done to guard our southern flank against encroachment by Lufkin.

JOSEPH J. GORMAN.

P-54 for ident., [P-54 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

INTERNATIONAL COLOR PRINTING COMPANY, INC.,
Wilkes-Barre, Pa.,
July 28, 1954.

A special meeting of the Board of Directors of International Color Printing Company, Inc., was held at the Hotel Biltmore, New York City, on Wednesday, July 28, 1954, at 6 P.M.

Present: Joseph J. Gorman, Ralph R. Govin and William S. McLean.

The President announced that he had several meetings with representatives of King Features and one meeting with officials of the Hearst organization and that they were insistent that this company establish a printing plant in the south, stating quite frankly they would be required to give their southern business to our competitors if we failed to do so.

The reports to stockholders regarding the Coosa Pines location were discussed and the President was authorized to advise the Coosa River Paper Co. that this company was interested in a contract for the purchase of newsprint and in having the paper company erect a building for the purpose of leasing it to this company so that this company can set up its presses and equipment and start a printing plant at that location.

The President was authorized to negotiate a long term contract with King Features which would assure this company of amortization of the cost of transporting and setting up its presses and other necessary equipment at the Coosa Pines location.

The President was also directed to determine the cost involved in the establishment of a southern plant and to negotiate a loan to defray such cost. All contracts and agreements in connection with the establishment of a southern plant, 3096 as well as the financing thereof to be subject to the approval of the Board before the final contracts or evidence of indebtedness are executed or issued.

There being no further business the meeting was adjourned.

_____,
Secretary.

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INTERNATIONAL COLOR PRINTING COMPANY, INC.,
Wilkes-Barre, Pa.,
October 4, 1954.

A special meeting of the Board of Directors of International Color Printing Company, Inc., was held at the offices of the Company, 268 George Ave., Parsons, Wilkes-Barre, Pa., on Monday, October 4, 1954, at 2 P.M.

Present: Joseph J. Gorman, John W. Booth and Wm. S. McLean.

The President announced that he had not been able to come to an agreement with King Features regarding a long term contract and the erection of a southern plant, but expected to have a meeting with representatives of King Features in New York on October 21, 1954, and he would like to have a meeting of the Board of Directors called to meet at the Hotel Biltmore in New York at 6 P.M. that evening for the purpose of consider-

ing the proposals of King Features. The Secretary was directed to send notices to the directors of said meeting.

The President reported on the earnings of the Company for the third quarter of 1954 and it was decided that a dividend should be declared.

On motion duly made and seconded the following resolution was passed:

RESOLVED that the sum of \$8700. be and is hereby appropriated and set aside from the surplus profits of this Company for the payment of a quarterly dividend of 17.4% upon its outstanding stock for the third quarter of 1954, said dividend to be paid on the 14th day of October, 1954 to stockholders of record as shown by the books of the Company at the close of business on the 10th day of October, 1954.

RESOLVED further that the Treasurer of this Company be authorized and instructed to give notice of such dividend and to pay the

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INTERNATIONAL COLOR PRINTING COMPANY, INC.,
Wilkes-Barre, Pa.,
October 21, 1954.

A special meeting of the Board of Directors of International Color Printing Company, Inc., was held at the Hotel Biltmore, New York City, on Thursday, October 21, 1954, at 6 P.M.

Present: Joseph J. Gorman, May G. Scofield, Ralph R. Govin and William S. McLean.

The President announced that he had met with representatives of King Features for the better part of the day, immediately prior to the stockholders meeting, but there were certain details that could not be ironed out and that no contract has as yet been tentatively agreed upon. He informed the stockholders that there were certain additional lists of cost and transportation service that King Features desired before entering into final negotiations. The President was authorized to submit the schedule of costs requested by King Features.

The President expressed disappointment at having called this meeting, but stated that had he been able to reach an agreement with King Features there were certain things that would have to be acted upon immediately so that we could get started with the southern plant.

A general discussion was held regarding the desirability of the Coosa River area as a location for a southern plant, the transportation savings that would be effected by the location of a plant in that area. Attention was also called to the fact that the operation of a third plant would increase the overhead to the extent that the transportation savings would just about be eliminated.

There being no further business the meeting was adjourned.

Secretary.

3099 INTERNATIONAL COLOR PRINTING COMPANY,
WILKES-BARRE, PA.

December 28, 1954.

Minutes of special meeting of Board of Directors.

A meeting of the Board of Directors of International Color Printing Co. was held, pursuant to notice, at the office of the Secretary, 818 Miners National Bank Building, Wilkes-Barre, Pa., at 2 P.M. on Tuesday, December 28, 1954.

Those present were:

Joseph J. Gorman,
John W. Booth,
William S. McLean.

The President announced that the meeting was called for the purpose of declaring a dividend for the fourth quarter of 1954, stating the amount of the profits of the Company for the first eleven months of the year and advising that in his opinion the regular quarterly dividend could be paid.

On motion duly made and seconded, the following resolution was adopted:

RESOLVED that the sum of \$8700 be and is hereby appropriated and set aside from the surplus profits of this Company for the payment of a quarterly dividend of 17.4% for the fourth quarter of 1954 upon its outstanding stock, said dividend to be payable on January 3, 1955, to stockholders of record on the books of the Company at the close of business on January 2, 1955.

The president called attention to the fact that his contract with the Company, dated November 15, 1949, provided for the payment of 10% of the annual operating profits of the Company, such profits to be computed before deductions and

charges for depreciation and before deductions for any
 3100 interest on notes payable to the Govins.

The President then stated that due to the fact the Company had during the current year paid the 1954 vacation pay due its employees and charged the same against the operating income for such year and had also set up a reserve for 1955 vacation pay of such employees and charged the same against the operating income for 1954, it resulted in a decrease in his salary to the extent of 10% of the amount of such reserve for the 1955 vacation pay charged against operating income for 1954.

The President also called attention to the fact that there would be a substantial deduction from operating income representing charges of costs of moving and setting up equipment in the contemplated southern plant and that such costs so charged to operating income would further substantially reduce his salary.

The President advised that he had discussed these matters with Mr. Govin and Mrs. Scofield, the beneficial owners of the stock of the corporation, both of whom are directors of the corporation but were unable to attend this meeting, and that both Mrs. Scofield and Mr. Govin had agreed that in determining the salary payable to the President under his contract the operating profit for such purpose, should be computed before deduction of the 1955 reserve for employees vacation pay during the year 1954 and should hereafter be computed before deductions for costs of moving and setting up equipment in the contemplated southern plant.

It was regularly moved and seconded that the following resolution be adopted:

RESOLVED, Whereas the agreement existing between the International Color Printing Company and
 3101 Joseph J. Gorman, dated the 15th day of November, 1949, provides, inter alia, for the payment to Mr. Gorman of additional salary in the amount of 10% of the annual operating profits and that such profits shall be computed before deductions and charges for depreciation and before deductions of interest or notes payable to the Govin family; and

WHEREAS, by resolution dated the 16th day of January, 1951, this Company agreed that such additional salary payable to Mr. Gorman shall be computed before deduction of taxes; and

WHEREAS the Company has, for the current year, set up a reserve for payment of 1955 vacation pay to its employees and deducted such reserve from its operating profits for the current year in addition to making payment of the vacation pay to its employees due for the year 1954; and

WHEREAS, this Company contemplates setting up a southern plant and the expenditure of the large sums of money in moving and setting up some of its equipment in such plant, part of such expenses to be charged to future operating profits;

NOW, THEREFORE, BE IT RESOLVED that the additional salary paid Joseph J. Gorman under his contract with this Company dated the 15th day of November, 1949, shall be computed on the operating profits before deduction and charges for depreciation, before deductions for any interest on notes payable to any members of the Govin family, before deduction of income taxes, before deduction for reserve set up in 1954 for the payment of employees vacation pay for the year 1955, and hereafter before deductions for charges against operating profits incurred by the reason of the moving or setting up any of the Company's equipment in its contemplated southern plant.

There being no further business the meeting was adjourned.

Secretary.

3102 [P-55 for ident., P-55 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

September 22, 1954.

AIR MAIL—SPECIAL DELIVERY

Mr. J. J. GORMAN, *President*,
International Color Printing Company,
268 George Avenue,
Wilkes Barre, Pennsylvania.

DEAR JOE: As requested in our telephone conversation this morning, I confirm my August 30 discussion with you and Mr. Nicht in New York as follows:

In the event you should decide to build a comic printing plant in the southeast, we would undertake to supply you with the newsprint requirements for such plant commencing in 1956, up to a maximum annual tonnage to be determined, with the understanding that your newsprint requirements of that plant would be purchased from us exclusively up to the maximum

amount of tonnage we agreed to supply. Our paper would be supplied at our regular contract price and terms, the arrangement to be covered by a long term contract either with Hearst Enterprises, Inc., or if with International Color Printing Company, to be guaranteed either by Hearst Enterprises, Inc., or King's Features.

We would enter into this arrangement with the understanding that you would be permitted to truck the newsprint from our plant should you so elect, in which case we would allow the published carload freight rate or trucking rate to destination, whichever was lower.

From our various conversations and from the data you have given us, we understand that your initial requirements would be in the neighborhood of 8,000 to 10,000 tons annually.

This offer is subject to your proposed printing plant being located in or near Childersburg or Birmingham, Alabama.

Coosa River Newsprint Co.—Continued

We will hold this offer open for a reasonable length of time but would like fairly prompt acceptance or rejection so as to enable us to make other plans for disposal of the tonnage in the event you should decide not to go ahead.

I understand you are planning to be down this way for further discussions sometime next week. We will endeavor to be whatever help we can in connection with your studies.

Yours very truly,

COOSA RIVER NEWSPRINT COMPANY,

Vice-President.

RMW:nbm

[P-56 for ident., P-56 in evid., H. T. Noel, official Reporter, U.S. District Court]

3104 In consideration of the mutual covenants and agreements hereinafter set forth, COOSA RIVER NEWS-PRINT COMPANY, an Alabama corporation (hereinafter called the Seller), hereby agrees to sell and Hearst Enterprises, Inc., a New York corporation (hereinafter called the Purchaser), hereby agrees to purchase from the Seller of the output of its mill, white standard newsprint paper for use exclusively by International Color Printing Company in its printing

plant to be erected at or nearby Coosa Pines, Alabama (hereinafter called the destination), as follows:

1. QUANTITY.

The quantity covered by this contract shall be: for 1956, 2,500 tons; for 1957, 8,000 tons, and for the remaining term of the contract, 10,000 tons annually.

Should International Color Printing Company's requirements exceed the above quantities in any of the years designated, Seller shall have an option to furnish all or any part of the additional white standard newsprint paper needed, such option to be exercised within 30 days after receipt of notice. Purchaser shall notify Seller of the additional quantity of newsprint which will be required by International Color Printing Company at any time. The first such notification shall be made by October 1, 1955.

The newsprint referred to herein shall be ordered, shipped, and delivered in carload lots in approximately equal monthly installments, non-cumulative, during the term of this agreement.

2. TERM.

The initial term of this contract shall be the period beginning January 1, 1956, and ending December 31, 1965. If on or before September 1, 1964, the Seller shall give the Purchaser written notice of Seller's desire to extend the contract for a further term of ten years, then, unless Purchaser on or before October 1, 1964, shall notify Seller of his refusal to extend the term, the contract shall be extended for an additional period beginning January 1, 1966, and ending December 31, 1975.

3. SPECIFICATIONS.

(a) Basis weight of the paper shall be approximately 36 pounds to 500 sheets, 24 by 36 inches, without reference to International Color Printing Company's production basis. On any individual shipment, five percent (5%) over or under such basis weight shall constitute good delivery.

(b) Unless changed by mutual agreement, roll sizes shall be: width, . . . 58 . . . and . . . 29 . . . inches; diameter, . . . 40 . . . inches maximum.

(c) Purchaser, or International Color Printing Company, shall furnish Seller by the 15th of each month specifications stating the tons of each width and diameter to be supplied.

during the succeeding month. If Purchaser, or International Color Printing Company, shall fail to furnish specifications by such date, Seller may manufacture and ship in accordance with specifications last received.

4. PRICE AND BILLING.

(a) The Seller's contract market price for standard newsprint paper in effect from time to time shall be the price applicable to all shipments of paper hereunder, but such price at no time shall be more than \$4 per ton in excess of the generally accepted contract market price then in effect for standard newsprint paper manufactured in North America delivered in New York City.

(b) Such price shall apply per ton of 2,000 pounds f.o.b. Seller's mill and shall be subject to an allowance in lieu of freight equal to the full carload rate or trucking rate, whichever is lower, in effect at the time of shipment for standard newsprint paper shipped from Coosa Pines, Alabama, to destination, but such allowance shall not exceed the carload rate of freight or trucking rate, whichever is lower, in effect at the beginning of the contract term between such points.

(c) The paper shall be invoiced at the actual weight of rolls when packed for shipment, including wrappers but excluding cores.

(d) Cores will be invoiced at 2c per inch, and such charge will be credited to Purchaser upon return of cores to Seller's mill in good condition, freight prepaid.

3105 (e) Any and all taxes, duties, or other charges of any nature imposed by any United States, state or other government authority, which shall become payable by reason of the sale or delivery of merchandise hereunder, shall be deemed for the Purchaser's account, and the Seller may either invoice the same to the Purchaser separately or add the same to the price of merchandise shipped hereunder.

5. DELIVERY.

(a) All deliveries under this contract (except in case of billing to Seller's order) shall be made f.o.b. cars at Seller's mill, and title shall pass to Purchaser at time of such delivery.

(b) Shipments shall be routed by the Seller, at the risk of the Purchaser, but with due regard for Purchaser's preference where practicable.

6. TERMS OF PAYMENT.

Payment shall be due net cash on or before the fifteenth day of the month following shipment, in United States funds at Seller's office. Any amount unpaid on the due date shall bear interest at six percent (6%) per annum, computed from the due date until paid.

7. CLAIMS.

(a) No allowance shall be made by the Seller for waste or damage or for paper left on cores.

(b) The Seller shall not be liable for a claim of any nature unless written notice of such claim is given Seller within ten days after receipt of shipment. The Seller shall not be liable for indirect or consequential damage.

8. CONTINGENCIES.

It is agreed that if the Seller's production and/or deliveries of standard newsprint paper be hereafter prevented, impaired, reduced, or restricted by reason of force majeure, strikes, floods, fires, accidents, transportation contingencies, embargoes, or shortages of water, power, labor, necessary materials or supplies, war, acts of God or the public enemy, riot or civil commotion, voluntary or involuntary compliance with any law, prohibition, restraint, order, direction, request, rule or regulation promulgated by any government, Federal or State, or any subdivision or agency thereof, or any other cause beyond its control (whether or not of the same character as the foregoing), then during such period the Seller without liability may reduce the quantities herein specified in proportion to the reduction or restriction upon the Seller's production and/or deliveries, and the Seller shall be required only to apportion the paper which it has available for shipment during such period of reduced production, on a pro rata basis among all customers with whom it then has contracts; and if for any such cause, including the failure of International Color Printing Company to erect a printing plant at or nearby Coosa Pines, Alabama, the International Color Printing Company's ability to accept and/or utilize paper is hereafter impaired, reduced, or restricted, the Purchaser's obligation to accept paper shall be reduced during the period of such disability by such quantity as the International Color Printing Company shall be unable to accept and/or utilize. In any such case the tonnage which the Seller is unable to deliver or the International Color

Printing Company to receive and/or utilize shall be eliminated from this agreement and the parties hereto shall be relieved of all liability with respect thereto.

9. DEFAULT.

Upon failure of Purchaser to pay any amount when due or to fulfill any other provision hereof, the Seller, without demand for payments past due, may at its option:

(a) Make deliveries subject to payment of sight draft attached to bill of lading without waiving or impairing Seller's right to adopt subsequently the course provided for in clause (b); or

(b) Refuse to furnish any more paper and declare the Purchaser in default and all of the obligations of the Purchaser hereunder due forthwith, notwithstanding the terms of the agreement, and the Purchaser shall be and remain liable to the Seller for all loss and damage sustained by reason of such failure to pay and/or default.

3106 Because of the difficulty in ascertaining the loss or damage which the Seller may sustain by reason of any such failure or default by the Purchaser, the sum of \$10 per ton for all paper covered by this contract and undelivered is agreed upon and fixed as liquidated damages, which the Purchaser agrees to pay to the Seller forthwith in addition to all amounts, including interest, for paper and cores delivered and not paid for or returned.

10. ASSIGNABILITY OF CONTRACT.

This contract shall not be assigned without the prior written consent of the Seller, but such consent shall not be arbitrarily withheld. The prohibition against assignment shall not apply in the case of any bona fide merger or reorganization in which the purchaser participates.

11. ARBITRATION.

It is hereby agreed that if at any time any dispute, difference, or question shall arise between the parties hereto or their respective successors or assigns, or any of them, relative to the construction, meaning, or effect of this agreement or any provision hereof or the rights or liabilities of the parties hereto respectively or of their successors or assigns under this agree-

ment in relation to the premises, then every such dispute, difference, or question shall be settled by arbitration in accordance with the rules and procedures, then obtaining, of the American Arbitration Association (with such modification as may be required to comply with the law of Alabama), and judgment upon the award rendered may be entered in any court having jurisdiction thereof.

12. NOTICES.

Notices hereunder shall be in writing and may be given by either party to the other by registered mail addressed as specified below, or to such other address as may be substituted by written notice from either party to the other.

Coosa River Newsprint Com-	Coosa Pines,	Alabama,
pany, Seller	City	State
Hearst Enterprises, Inc.	New York	New York
Purchaser	City	State

A notice so given by registered mail shall be deemed to have been received by the party to whom addressed on the third day following the date of mailing.

13. AMENDMENT.

This contract constitutes the entire agreement between the parties hereto and shall not be altered by either party except by consent of both parties in writing executed by their respective representatives duly authorized.

14. EXECUTION.

This contract shall be executed at Seller's office in three original counterparts and shall be interpreted, construed, and enforced according to the laws of the State of Alabama.

This agreement shall not be binding until executed by both parties by their respective representatives and upon such execution shall be binding upon and inure to the benefit of the parties hereto and, if assigned in accordance with provision of paragraph 10, upon their respective successors and assigns.

IN WITNESS WHEREOF, Each of the parties has caused this contract to be executed in its behalf by its appropriate representative duly authorized for this purpose, this 8th day of December, 1954.

Hearst Enterprises, Inc.,
Purchaser
by R. O. STERNBERGER,
Title President

Coosa River Newsprint
Company, Seller
by RON WATT,
Title Vice-President

3107 [P-57 for ident., p. 57 in evid., H. T. NOEL, Official Reporter, U.S. District Court.]

COOSA RIVER NEWSPRINT COMPANY,
Coosa Pines, Alabama,
November 19, 1954.

Mr. R. O. STERNBERGER, *President,*
Hearst Enterprises, Inc.,
Room 309-959 Eighth Avenue,
New York, New York.

DEAR BOB: In accordance with our telephone conversations today, we submit herewith quintuplicate copies of a contract to cover estimated newsprint requirements of a comic printing plant to be erected by International Color Printing Company at or nearby Coosa Pines, Alabama. After executing, kindly return all copies for our completing signatures, following which one copy (or two if desired) will be returned for your contract files.

Submission of this contract is predicated upon the assumption that said printing plant will be located at Coosa Pines, Childersburg, Sylacauga, Talladega, Anniston or Birmingham, Alabama, or some intermediate point.

It is understood that the quantities stated are honest estimates of the probable requirements and that we will supply you and you will purchase from us such requirements up to the amounts specified. Excess requirements are first to be offered us, as provided in the contract.

Notwithstanding the terms of the contract, it is understood we will be agreeable to an arrangement permitting trucking of the tonnage from our mill to International Color Printing Company's printing plant by their own trucks. In that event, title will pass F.O.B. trucks at our mill loading platform, instead of F.O.B. cars, as provided in the contract and the allowance in lieu of freight will be the current published trucking rate to destinations above mentioned, of 15c per 100 pounds.

Yours sincerely,

COOSA RIVER NEWSPRINT COMPANY,
RALPH /s/ *Vice President.*

RMW:nbm
Encs.

3108 [P-58 for ident., P. 58 in evid., H. T. NOEL, Official Reporter, U.S. District Court.]

INTERNATIONAL COLOR PRINTING Co.,
Newspaper Comic and Magazine Supplements,
268 George Avenue, Wilkes-Barre, Pa.,
Phone, Wilkes-Barre VA 4-7871, December 30, 1964.
19 Color Presses, Total Capacity 40 Million Four-Page Sections
Per Week, Branch Plant, 107 South Street, Peoria, Ill., Phone,
Peoria 4-3013

Mr. FRANK J. NICHT,
King Features Syndicate,
235 East 45th Street,
New York 17, N.Y.

DEAR FRANK: I am enclosing the first form of a contract to cover International Color Printing Company printings for King Features Syndicate which I think should be for a period of ten years. This form makes no reference whatever to the Southern Plant but I think you will be perfectly willing to agree that when a Southern plant is established by us the following should hold true: Sternberger will sell paper to us under the same terms for which he buys from Coosa River and to help us make up the increased cost of running an additional plant, whatever saving will result from hauling paper in our own trucks will be ours. Also, to help in the establishment of plant and to offset overhead part of the transportation saving will accrue to International Color Printing Company. This particularly holds true to the amount which we are now absorbing due to a theoretical Richmond plant. I realize fully unless the cost is kept down to the lowest possible minimum competition will be extremely difficult but I also know, as do you, that we cannot borrow money nor pay for a plant without a satisfactory profit. Therefore, there should be a further adjustment in price to allow us to what we both will agree is a satisfactory amount of profit per week. Otherwise, we cannot proceed with the plant and even if we start to operate we cannot continue. There will probably be some additional changes and additions to this proposal after we both have a chance to study it further but I am giving it to you now so you will have a chance to look it over

through the week end and maybe I will be able to see you sometime next week in New York.

Best regards.

Sincerely yours,

INTERNATIONAL COLOR PRINTING CO.

JOSEPH J. GORMAN.

JJG:MM

3100 [P-59 for ident., p. 59 in evid., H. T. NOEL, Official Reporter, U.S. District Court.]

February 13, 1956.

Mr. CALVIN CLYDE Jr.,
General Manager,
The T. B. Butler Publishing Co.,
Tyler, Texas.

DEAR MR. CLYDE: Our building at Lufkin is going up and we expect to be operating in September of 1956.

We have purchased International Color Printing Co. and likely will move some of this business to Lufkin.

We plan also to print for King Features on such contracts King holds in Texas but the details of this arrangement have not been worked out.

My suggestion is that you go along with King Features for the present but limit your contract to the shortest possible period so that you will be free to change if circumstances so arrange themselves that such a move is an advantageous one for you.

Kindest personal regards,

J. W. KOESSLER,

President.

JWK:bv

3110 [P. 60 for ident., P. 60 in evid., H. T. Noel, official reporter, U.S. district court.]

AGREEMENT made this 22nd day of April, 1958, between KING FEATURES SYNDICATE, Division of the Hearst Corp., hereinafter called "Syndicate", and INTERNATIONAL COLOR PRINTING COMPANY, hereinafter called "International".

WHEREAS Syndicate and International are the parties to an agreement made the 30th day of July, 1955, hereinafter called the "Contract".

NOW, THEREFORE, the parties agree as follows:

1. International agrees that printing done for Syndicate by Greater Buffalo Press, Inc., Buffalo, New York, shall be counted toward the printing business which Syndicate is obligated to give to International under Article Second of the Contract.

2. In the event International discontinues the operation of its plant at Peoria or any other plant, International will so adjust its prices that after the discontinuance of the operation of any such plant total orders for customers of the Syndicate which were being printed at any such plant before the discontinuance of the operation of such plant shall in the aggregate carry no higher net delivered costs, printing and transportation included, than at the time of such discontinuance of operation of such plant.

3. International Color Printing Company shall be privileged to place the printing orders so transferred from Peoria or any of its printing stations to a printing station of The Greater Buffalo Press, Inc., where, without penalty to the Syndicate, it may enjoy the lowest transportation rate to the printing order's destination.

4. These provisions do not preclude an increase in transportation rates in the event of specific or general increases in common carrier rates.

5. In the event International shall offer its printing plant at Wilkes-Barre, Pennsylvania, or any other of its printing plants for sale, International agrees that it will first make a written offer of sale thereof to Syndicate setting forth the price and terms at which it is willing to sell the same. Syndicate shall have 90 days within which to accept or reject the offer. If Syndicate fails to accept the offer International shall be free to sell to some other party the property so offered but only at the price and terms at which the same shall have been offered to Syndicate. If International desires to offer any or all of its printing plants for sale at a lower price or at better terms than the offer so made to Syndicate it will first make a written offer to Syndicate at the lower price or better terms or both and Syndicate shall have 90 days within

which to accept or reject the offer. This procedure shall be repeated as often as International lowers its price or alters its terms from the original offer.

IN WITNESS WHEREOF The Hearst Corporation, King Features Syndicate Division, has caused this agreement to be executed by Frank J. Nicht, its General Sales Manager, and International Color Printing Company by Joseph J. Gorman its President.

KING FEATURES SYNDICATE

Division of the Hearst Corporation.

By FRANK J. NICHT

General Sales Manager.

INTERNATIONAL COLOR PRINTING CO.

By JOSEPH J. GORMAN

President.

Witness:

MARGARET LUTZ

GEORGE C. DRESCOLL

J. W. KOESSLER.

3254 [P-73 for ident., P-73 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

May 2, 1958.

(transcribed May 7)

From: G. C. DRISCOLL

To: Mr. FRANK J. NICHT Re: Greater Buffalo Press—WALTER KOESSLER

DEAR MR. NICHT: Under separate cover I am forwarding you copies of Greater Buffalo contracts—these have been dated and signed by Walter Koessler.

He told me he didn't have any copies of the ICP contracts since these are with Joe Gorman in Wilkes-Barre, but he will contact Joe and have him make up four or five copies to forward along to you. I don't know whether he is telling the truth on this or not—but the way he sounded, I am assuming he didn't have copies of these contracts. All we can do is wait and see what comes of this.

I spent most of the day and on into the night with Walter Koessler. In fact, I was out at his home and we went out to dinner with his wife. She is very charming. She mentioned she

would like to, informally, at a luncheon sometime when they are in New York, meet George Sokolski. They are great admirers of Sokolsky. Too, she said if she could meet some of these people, she isn't a hero worshipper, but she does like Dorothy Kilgallen, and they are both great admirers of Jim Bishop and Pegler. Perhaps in a conversation or note to Koessler, you might mention this can be arranged.

He still insists he would like to have Frank Nicht come up to Buffalo and take a trip on his boat—he invited me to go along. He thinks it would do you good as it is very relaxing.

During my talk with Koessler, I found out they do over two million dollars a year in commercial printing in the Buffalo plant. In another three weeks, all of the color comic work will be done in Dunkirk. I went down to Dunkirk and spent about four hours at the plant going all the way through this again with his key man.

This fellow informed me they don't even have a set of presses for Lufkin, Texas, since they have a set on the floor at Dunkirk which they are trying to dismantle but because of increased work, they will never get these torn down to remove them to Alabama. Too, he informed me the same condition exists in Alabama.

During my talk with Koessler, I learned he has had several sessions with Jim Richter, Publisher of the Buffalo Evening News. Apparently this contract may finish up in Koessler's hands. Also during the talk, he said in order to get Hornady and Newport News to get the hell out of the picture, this operation should be bought and then we could eliminate any

3255 difficulty when it comes to handling prices. He said he is a great believer of keeping the price structure solid, and the only way you can accomplish this is to increase rates when you have increased costs.

Cordially,

GEORGE C. DRISCOLL.

GCD;pcg [P-74 for ident., P-74 in evid.; H. T. NOEL, Official Reporter, U.S. District Court.]

THIS AGREEMENT between GREATER BUF-
3256 FALO PRESS INC., a New York corporation, herein-
after called the "Press", and KING FEATURES SYN-
DICATE, a division of The Hearst Corporation, a Delaware corporation, hereinafter called the "Syndicate".

WITNESSETH THAT:

WHEREAS Press is in the business of printing four color newspaper comic sections, herein referred to as color supplements.

NOW THEREFORE the parties agree as follows:

1. Press appoints Syndicate its sales agent in the field of color supplement printing. However if Press makes direct sales, Press will pay to Syndicate

(a) with respect to all sales by Press to the accounts listed in Schedule A, commissions at the rates specified in Schedule A, and

(b) with respect to any sale by Press to an account not listed in Schedule A, a commission of fifty cents a thousand.

2. All sales by Syndicate shall be made in the name of Syndicate at prices determined by Syndicate and billed directly by Syndicate who shall pay Press at the rates specified in 3257 Schedule B and shall be entitled to retain as its commission any excess over such rates provided however that whenever Press shall sell or offer to sell any account at a net price after all allowances and commissions which is not at least fifty cents a thousand above the rates specified in Schedule B, the rates listed in Schedule B shall be reduced so that they are fifty cents a thousand less than such net price at which Press so sold or offered to sell.

3. Press will send to Syndicate duplicate invoices on all accounts sold by Press directly and not through Syndicate.

4. Press agrees not to solicit or contact any accounts which the press is printing for the Syndicate.

5. Syndicate agrees to place a combined total of 75% of Syndicate's supplement printing requirements as of the effective date of this contract (but not more than 75% of its supplement printing requirements at the time) either with Press or with International Color Printing Co. of Wilkes Barre, Pennsylvania, or both.

6. All supplement pages ordered by Syndicate will be printed with four colors or less if so designated by Syndicate.

7. The parties hereto shall be excused from total or partial performance hereunder because of and for the duration of strikes, fire damage, accidents, acts of God, unavailability of transportation facilities, shortage of newsprint, or other causes beyond their control whether or not of the same class 3258 or character making performance or partial performance hereunder impossible.

8. Press will package the supplements ordered by Syndicate for its accounts in kraft paper or on skids as specified by Syndicate which will pay the return freight charges on the skids.

9. Syndicate will supply or cause to be supplied to Press the necessary matrices for the printing of comic supplements ordered by Syndicate. Press will print supplements in a proper and workmanlike manner satisfactory to Syndicate and will start printing as soon as practicable after receipt of matrices for such printing. Syndicate will determine the pages composing makereadies, and Press will print comic pages and advertising pages comprising supplements only in accordance with instructions received from Syndicate. Press will deliver the supplements to a carrier designated or approved by Syndicate at the place of printing appropriately directed and sufficiently in advance of release date, as practicalities such as arrival of mats, mechanical difficulties and desires of the account will allow, to permit time of arrival as designated by Syndicate, in no event later than six days prior to publication date. Press will not permit work on orders not booked by Syndicate to delay or affect the completion of orders from Syndicate accounts.

10. In the event Press shall offer any or all of its printing plants for sale Press agrees that it will first make a written offer of sale thereof to Syndicate setting forth the price and terms at which it is willing to sell the same. Syndicate shall have 90 days within which to accept or reject the offer. If Syndicate fails to accept the offer Press shall be free to sell to some other party the property so offered but only at the price and terms at which the same shall have been offered to Syndicate. If Press desires to offer any or all of its printing plants for sale at a lower price or at better terms than the offer so made to Syndicate it will first make a written offer to Syndicate at the lower price or better terms or both and Syndicate shall have 90 days within which to accept or reject the offer. This procedure shall be repeated as often as Press lowers its price or alters its terms from the original offer.

11. In the event International Color Printing Company of Wilkes-Barre, Pennsylvania, discontinues the operation of any of its plants, Press agrees to print any supplements printed for Syndicate or any of its customers at any such plant before the discontinuance of the operation of such plant and not there-

after printed at other plants of International Color Printing Company at a price which will result in Syndicate paying no more to Press, printing and transportation included, than the amount paid to International Color Printing Company for printing such supplements at the time of such discontinuance of the operation of such plant.

3260 12. This agreement shall run from September 15, 1957 to September 14, 1967 and thereafter for successive periods of five years each unless terminated by written notice given by either party to the other to be effective as of September 14, 1967 or as of the end of any such five year period and delivered two years prior to the date as of which it is to be effective.

13. This agreement shall bind the successors and assigns of the parties hereto.

14. Contract only to business after date of contract.

IN WITNESS WHEREOF Greater Buffalo Press Inc. has caused this agreement to be executed by its President, and King Features Syndicate division of The Hearst Corporation by Frank J. Nicht, its General Sales Manager.

GREATER BUFFALO PRESS INC.

By.....

President.

KING FEATURES SYNDICATE

Division of The Hearst Corporation

By.....

General Sales Manager.

3261

SCHEDULE "A"

The Dallas News 50¢ per M
 The Houston Chronicle 50¢ per M
 The San Antonio Express 50¢ per M
 The New Orleans Times Picayune 50¢ per M
 The New Orleans States 50¢ per M
 The Shreveport Times 50¢ per M
 The Monroe World 50¢ per M
 The Waterloo Courier \$1.00 per M
 The Elmira Telegram 50¢ per M
 The Wichita Falls Times 50¢ per M
 The Harte Hanks Newspapers 50¢ per M
 The Calgary Herald 83¢ per M

3262 [P-75 for ident., p-75 in evid., H. T. NOEL, Official Reporter, U.S. District Court.]

MEMORANDUM

NOVEMBER 7, 1957.

I telephoned Mr. Koessler at Buffalo this afternoon and went over with him again the notations he made on our last contract draft.

Clause One: Paragraph B--

Mr. Koessler wants to include an understanding to the effect that there will be no commission paid on Scripps-Howard newspaper business or the Canadian Weekend business.

I read Clause Two to him and ask him why it wouldn't be just as well to let this stand and he seemed to agree. As a matter of fact, I think he seemed to be a little confused about the marginal note that he made on that clause. Anyway, let's try it as it is written.

Clause Four:--

This clause should be changed a bit so that it will read something like this: Press agrees not to solicit or contact any accounts which the Press or its affiliated company or companies is printing for the Syndicate.

Clause Fourteen:--

This was inserted by Mr. Koessler. His notation reads "Contract only to business after date of contract." This means that any understandings, especially as concerns cut-ins, etc., are not to be retroactive before the date of the contract.

I discussed the rate schedule with Mr. Koessler and I think we must accept it as being the minimum rate schedule but he did say this, and this is very important, the rates specified in that schedule will be good throughout the year 1958. In other words, there are some increases to come along but they are absorbed in the rate schedule as it stands throughout the year of 1958.

FJN:mec

3283 [P-76 for ident., P-76 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

September 11, 1957

Mr. J. D. GORTATOWSKY,
Hearst Newspapers,
650 Eighth Avenue,
New York 10, New York.

Dear Gorty: I sent our new contract draft to Koessler last Monday, September 9th.

Sincerely yours,

FJN:mec

F. J. NICH.

3284 [P-77 for ident., P-77 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

GENERAL OFFICES, HEARST NEWSPAPERS,
HEARST MAGAZINE BUILDING,
57TH STREET AT 8TH AVENUE,
New York, June 27, 1955.

To: Mr. F. J. Nicht.

From: Mr. J. D. Gortatowsky.

DEAR FRANK: What ever happened to that friend in Greater Buffalo?

We were going to have a meeting and try to work something out.

GORTY
J. D. G.

3285 [P-78 for ident., P-78 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

GENERAL OFFICES, HEARST NEWSPAPERS,
Hearst Magazine Building,
57th Street at 8th Avenue,
New York, June 30, 1955.

To: Mr. F. J. Nicht

From: Mr. J. D. Gortatowsky

DEAR FRANK: I thought you were going to discuss with Greater Buffalo a deal whereby there would be a combination of interests. Buffalo would take over all the printing, including I.C.P., and you would do the selling.

That's the deal we talked about—you, the Buffalo man and myself. Then the two of you were to pursue the matter and come back to me.

I never heard any more about that deal. What happened?

GORTY,
J. D. G.

(Gortatowsky, King Features Exclusive Selling Agent.)

3266 [P-80 for ident., P-80 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

FEBRUARY 11, 1957.

Mr. J. D. Gortatowsky,
Hearst Newspapers,
959 Eighth Avenue,
New York 19, New York

DEAR GORTY: It was about the middle of December that you, Mr. Koessler and I met at Mr. Graustein's office. Since then I have reminded Walter Koessler twice about this, but no word has come through from him regarding the proposed contract draft.

In response to my first query he told me that due to the passing of his mother and tax matters, he was held up, but he would get to it shortly.

Sincerely yours,

FJN:mec
cc: Frank C. McLearn

F. J. NICH.

3267 [P-81 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

Gortatowsky: Nicht suggests getting together with Scripps-Howard to start a printing plant.

JUNE 20, 1957.

Mr. J. D. Gortatowsky,
Hearst Newspapers,
959 Eighth Avenue,
New York 19, New York

Dear Gorty: I want to make one more contribution to possible solutions to our readyprint problem.

A number of newspapers in competitive fields have formed, as you probably know, mechanical production companies. The list will undoubtedly grow. Just a few of these companies are operating in Birmingham, Shreveport, Nashville, Chattanooga, Salt Lake City, El Paso, Tulsa, Evansville, etc.

I suggest therefore, we might try to interest the Scripps-Howard people in a production setup with us based on comic supplement printing. To begin with there are the Hearst newspaper comic supplements and the readyprint business controlled by KFS. Scripps-Howard people have comic supplements in Knoxville, Memphis, Evansville, Columbus, Indianapolis, to mention some, and also comic supplements printed for non-Scripps-Howard newspapers, through NEA.

A combination such as this could have a central comic supplement printing plant or two logically located geographically.

We might even consider the possible inclusion of the New-house newspapers.

If something like this could be worked out it would assist in restoring the strength of our readyprint position and pose a threat to Koessler. I think it would also create a more competitive condition in the readyprint field, a rather desirable accomplishment. It might also give us trading possibilities.

Sincerely yours,

FJN:mec

F. J. NICHTE.

cc:F. C. McLearn

3268 [P-82 for ident. P-82 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

SEPTEMBER 4, 1957.

Office memo: KING FEATURES SYNDICATE

To: MR. F. J. NICHTE

From: MR. J. D. GORTATOWSKY

DEAR FRANK: This acknowledges your memorandum of September 3. I think you should go ahead with your negotiations of the new contract with Koessler.

Gorty
J. D. G.

Gortatowsky orders dealing with G.B.P.

8269 [P-83 for ident. P-83 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

KING FEATURES SYNDICATE,
 835 East 46th Street,
 New York 17, N.Y.,
 Tel. Murray Hill 2-5600,
 Cable Address: Kingsyn New York,
 October 22, 1957.

G.B.P. did you want to sign contract.

To: Mr. F. J. NIGHT

From: Mr. J. D. GORTATOWSKY

DEAR FRANK: We have a lot of dope on Waterbury now, but as I have told you repeatedly, we simply can't do anything until we get the Buffalo contract signed. The last time I talked to you you said you were going to talk to Graustein to see if there was any reason why we should delay the signing.

This thing has gone on for so many months, due primarily to Buffalo's stalling tactics that I'm wondering if Mr. Koessler is serious or just playing us for suckers.

We can't move until the Buffalo contract is signed because we can't know how much leeway we will have for printing in other plants, including those owned by us or leased by us.

Gorty
 J. D. G.

3270 [P-84 for ident. P-84 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

Regarding unsigned contracts.

Gortatowsky interested in contract he proposed.

OCTOBER 23, 1957.

MR. J. D. GORTATOWSKY,
 Hearst Newspapers,
 959 Eighth Avenue,
 New York, New York

DEAR GORTY: I am even more upset than you are concerning the continuing delay in getting something signed from Mr. Koessler.

Last week I talked to Mr. Graustein about this after consultation with you. I asked Mr. Graustein if it wouldn't be well for me to telephone Koessler and he thought I should do

so, but to refer to the unsigned document in an incidental manner.

I talked with Mr. Koessler at his home because there was plenty of unfinished business on our agenda. He repeated that the paper looked all right to him and that he would come down here. As a matter of fact, he set Friday, November 1, as the meeting date.

I suggest that I see Koessler alone this time because if he brings down what we want, I am pretty sure it will involve further revision.

You may have other ideas.

Sincerely yours,

F. J. NICHT.

FJN:ML

cc: F. C. McLean

3271 [P-85 for ident., P-85 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

KING FEATURES SYNDICATE,

235 East 45th St.,

New York 17, N.Y.,

Cable Address, *KINGSYN* New York,

All communications must be addressed to

King Features Syndicate,

11/15/57.

To: Mr. F. J. Nicht

From: Mr. J. D. Gortatowsky

DEAR FRANK: I don't want to proceed with Waterbury until I know we have closed the deal in Buffalo. I just know that it would be impossible to determine exactly what we can do and should do with Waterbury until we know exactly what the Buffalo contract provides. I judge from the last memos I've received from you that the Buffalo deal will be closed any day.

Best regards.

GORTT,
J. D. G.

3272 [P-86 for ident., P-86 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

November 13, 1957.

Mr. J. D. Gortatowsky,
Hearst Newspapers,
935 Eighth Avenue,
New York 19, New York.

DEAR GORTY: I would like to suggest that the Waterbury matter be given further consideration at this time. Of course, you will decide whether or not negotiations are to be pursued.

If the matter is to be gone into further, I see no reason why these negotiations should not continue regardless of the Koessler negotiations. Any negotiations with Waterbury would naturally consume some time.

Sincerely yours,

F. J. NEHT.

FJN:mec

3273 [P-87 for ident., P-87 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

KING FEATURES SYNDICATE,

235 East 45th Street,

New York 17, N.Y.,

Tel. MUrray Hill 2-5600,

Cable Address: KINGSTON New York.

4/15/58.

To: Mr. F. J. Neht.

From: Mr. J. D. Gortatowsky.

DEAR FRANK: I don't know what to write you about the Wilmington situation because I don't know the status of the contract with Koessler. If you could get that closed up one way or the other, we could work out a program but it's utterly impossible to do that until we know exactly what the deal is with Greater Buffalo and for what period of time.

When will you be seeing Graustein?

When will you be seeing Koessler?

GORTY.
J.D.G.

cc: McLean-4/10/58.

3874 [P-88 for ident., P-88 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

JULY 22, 1958.

Mr. J. D. GORTATOWSKY,
Hearst Newspapers,
959 Eighth Avenue,
New York 19, New York.

Dan Gorry: Last April, when I obtained Mr. Koessler's signature to our sales contract, you suggested I consult Mr. Graustein. This was done the same time we submitted a supplemental letter agreement to Mr. Koessler, copy of which I am enclosing.

I've talked to Mr. Koessler concerning this supplemental agreement a number of times and have had a representative see him in Buffalo. In each instance Mr. Koessler says it looks all right to him and he'll send it along. To date he hasn't done so.

When I saw Mr. Graustein concerning this supplemental letter I don't think he was too sanguine that Mr. Koessler would sign it, in which event we should go ahead and sign the base contract. Personally, I think this would be a good thing to do because negotiations with Mr. Koessler can be almost interminable.

The contract leaves much to be desired but I think you feel that it would be better to have this rather than no written understanding at all.

Our readyprint profit continues to decrease which, under the circumstances, is inevitable. I don't think the Syndicate can ever have the protection it should have for its readyprint business without a plant or plants of its own. That would be the only way to keep Mr. Koessler in line.

Sincerely yours,

F. J. NICHT.

FJN:nen

3275 [P-89 for ident., P-89 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

MAY 5, 1958.

KING FEATURES SYNDICATE,
A Division of The Hearst Corporation,
235 East 45th Street,
New York 17, N.Y.

DEAR SIRs: This is to confirm that while in our agreement with you of even date there is a provision that we will sell our printing services to new accounts at no lower prices than those listed in Schedule B plus 50c per thousand, it is also a part of the agreement (i) that this provision is applicable to sales by any account referred to in the parenthesis in paragraph 1(b) to or for new accounts, and (ii) that we will not sell our printing services directly or indirectly to any account referred to in the parenthesis in paragraph 1(b) at lower prices than those listed in Schedule B plus 50c per thousand.

Will you confirm this understanding.

Yours very truly,

GREATER BUFFALO PRESS INC.,
By J. W. KOESSLER,

President.

We confirm the understanding stated in the above letter.

KING FEATURES SYNDICATE,
A DIVISION OF THE HEARST CORPORATION,
By FRANK J. NICH.

THIS AGREEMENT between GREATER BUF-
3276 FALO PRESS INC., a New York Corporation, herein-
after called the "Press," and KING FEATURES
SYNDICATE, a division of The Hearst Corporation, a Dela-
ware Corporation, hereinafter called the "Syndicate."

WITNESSETH THAT:

WHEREAS Press is in the business of printing four color newspaper comic sections, herein referred to as color supplement.

NOW THEREFORE the parties agree as follows:

1. Press appoints Syndicate sales agent in the field of color supplement printing. However if Press makes direct sales, Press will pay to Syndicate.

(a) with respect to all sales by Press to the accounts listed in Schedule A, commissions at the rates specified in Schedule A, and

(b) with respect to any new sale by Press to an account not listed in Schedule A (except sales to Scripps Howard Newspapers and affiliated companies and sales of the publication known as Weekend), and present accounts of the Papert Newspaper Group a commission of fifty cents a thousand.

2. All sales by Syndicate shall be made in the name of Syndicate at prices determined by Syndicate and billed
3277 directly by Syndicate which shall pay Press at the rates specified in Schedule B and shall be entitled to retain as its commission any excess over such rates. The rates specified in Schedule B may be increased or decreased in accordance with and in proportion to increased or decreased labor rates or material or service costs. The Press agrees to sell its printing services to new accounts at no lower prices than those listed in Schedule B plus 50c per thousand.

3. Press will send to Syndicate duplicate invoices on all such new accounts sold by Press directly and not through Syndicate.

The word "new" in paragraphs 1B, 2 and 3 is defined as accounts not presently held by Greater Buffalo Press Inc.

4. Press agrees not to solicit or contact any accounts which Press or its affiliated company or companies is printing for Syndicate.

5. Syndicate agrees to place a combined total of 75% of Syndicate's supplement printing requirements as of the effective date of this contract (but not more than 75% of its supplement printing requirements at the time) either with Press or with International Color Printing Co. of Wilkes-Barre, Pennsylvania, or both.

6. All supplement pages ordered by Syndicate will be printed with four colors or less if so designated by Syndicate.

7. The parties hereto shall be excused from total or partial performance hereunder because of and for the duration of strikes, fire damage, accidents, acts of God, unavailability
3278 of transportation facilities, shortage of newsprint, or other causes beyond their control whether or not of the same class or character making performance or partial performance hereunder impossible.

8. Press will package the supplements ordered by Syndicate for its accounts in kraft paper or on skids as specified by Syndicate which will pay the return freight charges on the skids.

9. Syndicate will supply or cause to be supplied to Press the necessary matrices for the printing of comic supplements

ordered by Syndicate. Press will print supplements in a proper and workmanlike manner satisfactory to Syndicate and will start printing as soon as practicable after receipt of matrices for such printing. Syndicate will determine the pages composing makereadies, and Press will print comic pages and advertising pages comprising supplements only in accordance with instructions received from Syndicate. Press will deliver the supplements to a carrier designated or approved by Syndicate at the place of printing appropriately directed and sufficiently in advance of release date, as practicalities such as arrival of mats, mechanical difficulties and desires of the account will allow, to permit time of arrival as designated by Syndicate, in no event later than six days prior to publication date. Press will not permit work on orders not booked by Syndicate to delay or affect the completion of orders from Syndicate accounts.

10. In the event Press shall offer any or all of its 3270 printing plants for sale Press agrees that it will first make a written offer of sale thereof to Syndicate setting forth the price and terms at which it is willing to sell the same. Syndicate shall have 90 days within which to accept or reject the offer. If Syndicate fails to accept the offer Press shall be free to sell to some other party the property so offered but only at the price and terms at which the same shall have been offered to Syndicate. If Press desires to offer any or all of its printing plants for sale at a lower price or at better terms than the offer so made to Syndicate it will first make a written offer to Syndicate at the lower price or better terms or both and Syndicate shall have 90 days within which to accept or reject the offer. This procedure shall be repeated as often as Press lowers its price or alters its terms from the original offer.

11. In the event International Color Printing Company of Wilkes-Barre, Pennsylvania, discontinues the operation of any of its plants, Press agrees to print any supplements printed for Syndicate or any of its customers at any such plant before the discontinuance of the operation of such plant and not thereafter printed at other plants of International Color Printing Company at a price which will result in Syndicate paying no more to Press, printing and transportation included, than the amount paid to International Color Printing Company 3280 for printing such supplements at the time of such discontinuance of the operation of such plant.

12. This agreement shall run from December 1, 1957 to November 30, 1967 and thereafter for successive periods of five years each unless terminated by written notice given by either party to the other to be effective as of November 30, 1967 or as of the end of any such five year period and delivered two years prior to the date as of which it is to be effective.

13. This agreement shall bind the successors and assigns of the parties hereto.

14. This contract shall be effective May 5, 1958.

IN WITNESS WHEREOF Greater Buffalo Press Inc. has caused this agreement to be executed by..... its President, and King Features Syndicate division of The Hearst Corporation by Frank J. Nicht, its General Sales Manager.

GREATER BUFFALO PRESS INC.
By J. W. KORNBLER,

President.

KING FEATURES SYNDICATE,
DIVISION OF THE HEARST
CORPORATION,

By FRANK J. NICHT,
General Sales Manager.

GEORGE C. DRISCOLL,

MARGARET LUTZ.

SCHEDULE "A"

The Dallas News 50¢ per M
The Houston Chronicle 50¢ per M
The San Antonio Express 50¢ per M
The New Orleans Times Picayune 50¢ per M
The New Orleans States 50¢ per M
The Shreveport Times 50¢ per M
The Monroe World 50¢ per M
The Waterloo Courier \$1.00 per M
The Elmira Telegram 50¢ per M
The Wichita Falls Times 50¢ per M
The Harte Hanks Newspapers 50¢ per M
The Calgary Herald 83¢ per M

3284 [P-90 for ident., P-90 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

JULY 26, 1957.

Memorandum:

On July 25, Walter Koessler, Joe Gorman and I met at the Ritz-Tower and spent several hours together discussing the pending contract. The meeting was extremely friendly and I don't think we're going to have any difficulty working out a contract. This contract won't be what we would like to have it be, but it will be far better than having no written understanding at all.

I told Mr. Koessler what we wanted first of all is the protection of King Features Syndicate business and that the contract will accomplish.

I told him that there should be a favored nation understanding and he agreed but we will have to see how the lawyers are going to put this into the agreement.

I questioned his prices and this was more or less left up in the air. When we draft our next agreement we'll have to work this out.

I discussed the so-called prospect list. I don't think this is going to lead us into any difficulty, although I told Koessler it seemed rather ridiculous for GBP and King to be working on the same prospect. This ought to work itself out as time goes on, point by point. Meanwhile, Koessler did agree not to do anything about the South Bend TRIBUNE and he said he was going to write me some suggestions about this.

We talked about the abandonment of printing plants and Peoria undoubtedly will be dropped.

I talked about NEA and other syndicates and I made it clear that whenever we could get a readyprint run even though it was handled by a competitor we'd proceed to do so if the inclusion of our pages were to be involved.

I told Koessler that the ICP contract would "stand as written." This should be so because in that contract is a clause under which ICP would have to obtain our consent if any other business were to be placed in the Sylacauga plant.

We talked about commissions. We can have a commission on the Lake Charles business, although this won't amount to much inasmuch as the run is short. Koessler repeated again

that we will get our commission on Dallas, San Antonio, and Houston.

I brought up the matter of a commission on all of the Lufkin business but we didn't seem to get very far with this. Koessler said that there was so little margin in the Papert business that he couldn't pay a commission on that. This is something we can thrash out later.

I brought up the matter of a reduction in price following the introduction of economies at the different plants. Koessler takes the position that these economies are necessary at Wilkes-Barre in order to bring that plant up to a more profitable production point.

We talked about the sales agency part of our contract. I suppose this should continue to be in our contract but undoubtedly we can't insert the word exclusive.

3285 Koessler repeated again that any difference in transportation when a plant is closed such as Peoria will be made up.

There was, of course, general discussion, not only about the present but the future. Koessler keeps on telling me that we have nothing to fear and that we can always expect preferential treatment. However, I pointed out a number of cases where I didn't think this was so. I brought up the Lake Charles matter. He tried to justify what was done there because it involved two other small runs owned by the same people. I told him he should have advised us that he was working on this. I stressed the point that GBP should keep us posted more closely on their activities.

He laughingly referred to the bill for \$1,500 which he received from the legal department. He thought the charge was high. He told me that he had another bill for \$1,500 from his own lawyer.

Koessler also told me that he didn't think we should abandon our molding charges. I do think we should refer to these as combination charges, however.

3286 [P-91 for ident., P-91 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

JULY 23, 1957.

Memorandum:

Outline to Mr. K. what my conception of a simple agreement should be. The lawyers have confused me and maybe they have confused him (consult my notes).

However, the agreement should have positive mutuality—not just a convenience agreement. It should not breed double-talk and I think we've had some of that up to this time.

Try, more than ever, to convince him of my sincerity and I would like to feel the same about him.

Remind him of the ICP deal. I am sure I was responsible for promoting it and I would like to have him recognize more than ever that fact. I don't know how far we can get by referring to specific instances, but it might be well to recite some of them: Jackson, Harte-Hanks, other southern situations, and too many others to mention. After all this is done, then I think I should start out to give him a hazy idea of what is in my mind in an overall way.

If he goes along with me and indicates a desire to commit it to an agreement then Mr. K. has a lot to gain and so would we, but he's got to come clean. It's a great plan and one I am sure is easy of consummation even if the capital cost should run into millions but this capital cost could be eliminated or defrayed so far as he is concerned under the possibility of a lease arrangement, but always we must make sure we are in control. The whole thing I am sure could be carried to completion but nowhere along the way can there be any doublecrossing.

Our present arrangement isn't bad but it certainly isn't what it was intended on our part, and we are treated if not like an outsider but perhaps on a parity with other syndicates and not as the favored nation which really should be our status.

FJN:mec

1513

3287 [P-92 for ident., P-92 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

JUNE 17, 1954.

MR. HOUSTON HARTE,
The Harte-Hanks Newspapers,
San Angelo, Texas

DEAR MR. HARTE: On my visit to Lufkin, Texas on June 3rd I signed a commitment to purchase 15,000 tons of newsprint from the Southland Paper Co. beginning with January 1, 1957.

We are completing plans, for the building, to house the color plant at Lufkin.

We have reached an agreement, verbal and tentative in character, with Frank Nicht of the King Features Syndicate, to print the sections that syndicate has under contract in the Southwest area.

It will be some months before we are operating in Lufkin. In the meantime, I would appreciate your limiting your agreement to King Features to its present period.

I will keep you informed on the progress of our operation at Lufkin.

Thank you for the assistance you have given our company on this matter.

Very truly yours,

J. W. KOESSLER, *President.*

JWK:br

3288 [P-93 for ident., P-93 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

JULY 1, 1954.

MR. JAS. F. CHAMBERS, JR.,
Vice Pres. & General Manager,
The Daily Times Herald
Dallas, Texas

DEAR JIM: Cancellation notices never brighten our day and one from you is particularly disturbing. However, your notice of June 21st mitigates the sting to some extent.

Your cancellation notice has been recorded and I earnestly hope that we will be able to work out a new supplement printing contract with you long before its termination date.

We are continuing to expand our comic supplement printing activities and I'll keep you posted as these plans develop.

With warm personal regards,

Sincerely,

F. J. NICHT.

FJN:er

3289

THE DAILY TIMES HERALD,

First in Dallas—and Growing,

Jas. F. Chambers, Jr.,

Vice-President and General Manager,

June 21, 1954.

MR. F. J. NICHT,
General Sales Manager,
King Features Syndicate,
235 East 45th Street,
New York 17, New York

DEAR FRANK: Attached you will find a copy of a letter which I received today from Mr. Koessler.

Since we have not heard anything specific from you regarding the future of our color contract following expiration of the contract under which we are now operating, I wondered if you might have anything specific to add at this time.

There is always the likelihood that we might not want to make an agreement with Greater Buffalo Press following the completion of our present contract with you. There is also the possibility that we might want to explore an agreement with someone other than King following the expiration of our present contract. Therefore, I will appreciate it if you will accept this letter as your legal notice under the terms of the contract now in force that we wish to terminate the agreement after October 29, 1955.

You will understand, of course, that this step is taken merely as a protective measure.

With best personal regards.

Sincerely,

JAS. F. CHAMBERS, JR.,
Vice Pres. & General Manager.

JFC:jw

THE GREATER BUFFALO PRESS, INC.,
 302 Grote Street,
 Buffalo 7, N.Y.,
 June 17, 1954.

Mr. JAMES F. CHAMBERS, Jr.,
 Vice President and General Manager,
 The Dallas Times Herald,
 Dallas, Texas.

DEAR MR. CHAMBERS: On my visit to Lufkin, Texas on June 3rd, I signed a commitment to purchase 15,000 tons of newsprint from the Southland Paper Co. beginning with January 1, 1957.

We are completing plans, for the building, to house the color plant at Lufkin.

We have reached an agreement, verbal and tentative in character, with Frank Nicht of the King Features Syndicate, to print the sections that syndicate has under contract in the Southwest area.

It will be some months before we are operating in Lufkin. In the meantime, I would appreciate your limiting your agreement to King Features to its present period.

I will keep you informed on the progress of our operation at Lufkin.

Thank you for the assistance you have given our company on this matter.

Very truly yours,

J. W. KOESSLER, *President.*

391 [P. 94 for ident., P-94 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

MEMORANDUM

AUGUST 16, 1954.

On August 11, Mr. Burns and I spent several hours with Walter Koessler of the Greater Buffalo Press at his office. A lot of ground was covered and this about summarizes it:

We worked out what I hope will be an understandable rate scale for the Toledo, Youngstown and Erie runs we are now turning over to Greater Buffalo Press. Additional runs are to be separately agreed upon.

Mr. Koessler told me that nothing had happened to change his plans regarding Lufkin and it must be assumed they are going ahead. Koessler expects to be under way the latter part of 1955 and certainly by January 1, 1956.

I indicated to Mr. Koessler what we had in mind in the South and I gathered from his reaction that they had no plans to establish another Southern printing plant—not unless Koessler wanted to be secretive.

We talked about our competitors, Eastern and World Color. Koessler may be a little bit disturbed by World Color but apparently he doesn't fear them too much at the Kansas City Star and St. Louis Globe Democrat because he claims World Color cannot go up and down on odd page supplements.

Regarding our proposed Southern plant, I asked Koessler if we could make a deal with him like we have at Lufkin for the printing of the Atlanta, Nashville and Miami runs, but he didn't say yes and he didn't say no definitely, but I gathered there might be possibilities in this connection.

I also gathered that Greater Buffalo Press is a bit cautious about making supplement printing rate increases, fearful they might get some cancellations.

He seemed to think that they would continue to print the Kansas City Star and St. Louis Globe Democrat runs at Buffalo even when their plant at Lufkin is underway.

I spoke to him about the loss of molding revenue and I think he is going to be careful about this hereafter.

I asked him about the Harte-Hanks and Fentress newspaper group printings. He didn't seem to enthuse very much about this but anyway it's probably premature to go into this. Koessler wants to stick to the larger runs, of course, and if smaller ones are printed there is going to be a cover charge. I told him what the Chicago Tribune was doing in connection with going after supplement printing, mentioning the Bozeman and Paducah cases. He undoubtedly made a mental note of this. I told him we would consider it out of order to quote on any of these runs that are ours. He declared he didn't know about the Bozeman matter.

I asked him for transportation rates to Richmond and Bangor, Maine and he said they would be forthcoming.

I think we can expect continuing and perhaps increasing cooperation from Greater Buffalo Press. Our relations undoubt-

edly are becoming stronger and stronger. Koessler asked me a number of questions about ICP and Gorman which leads me to believe he might be interested in a purchase. That was very interesting to me but I deliberately refrained from discussing it too far.

FJN:ML

[For ident. P-95 in evid., H. T. Noel, Official Reporter,
U.S. District Court.]

THE GREATER BUFFALO PRESS INC.,
WEB PRESS COLOR PRINTING,
302 Grote Street,
Telephone BEdford 6410,
Buffalo 7, N.Y.,
August 27, 1954.

Mr. F. J. NICHT,
King Features Syndicate,
235 East 45th St.,
New York 17, New York

DEAR FRANK: I have not even discussed the Texas plant with N.E.A.

It is our plan to develop the new accounts along the lines discussed with you, and to handle the accounts you serve in the manner in which we have talked about.

This, as I see it, covers all the business in the area—present and future.

Kindest regards,

J. W. Koessler
J. W. KOESSLER,
President.

JWK:br

FEBRUARY 26, 1958.

NOTES REGARDING GREATER BUFFALO PRESS
(Page 2.)

Points for clarification:

St. Petersburg, Fla., Independent. NEA underbid King.
Shouldn't King be compensated at the rate of 50¢ per M?

Niagara Falls, N.Y., Gazette. Shouldn't we be getting 50¢ per M?

Buffalo, N.Y., News—it should be our printing contract.

We're only getting 50¢ on Shreveport—we lost much more. When Lufkin plant's in operation Koessler agreed we wouldn't lose anything profitwise.

GBP is printing Memphis Commercial Appeal. Why no commission for KFS? Koessler letter January 26, 1956, stated, "If, however, we get in the picture as printers, we will see that King is cut in for something as much as we can squeeze out of it."

How could NEA quote Dubuque \$12.00 per M on an 8-page standard special makeready of 40,000 as they just did?

Gary, Ind. POST TRIBUNE—what's the next step on the 6-page standard inquiry? Our 8-page contract has quite sometime to run.

Sarasota, Fla. Herald-Tribune & Journall—has an NEA 8-page section. We asked ICP for a price and they want \$65.00 over contract. The price is not competitive. What could GBP do?

RKR.

3296 [P-98 for ident., P-98 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

THE GREATER BUFFALO PRESS INC.,

WEB PRESS COLOR PRINTING,

302 Grote Street,

Telephone BEdford 6410,

Buffalo 7, NY.,

August 25, 1955.

Mr. F. J. NICHOL,
King Features Syndicate,
235 E. 45th St.,
New York 17, N.Y.

DEAR FRANK: It appears to me that the best way of handling the N.E.A. problem is to let N.E.A. hold what they have with an opportunity to get a decent price for it and thus realize some income.

From the conversation of last week I think this can be worked out.

It seems that there will always be printers who will take in jobs at low cost and it takes a long time for them to find out that they are wasting their time. When they finally decide to quit, there will be another to carry on.

Printers by themselves are not the problem because they have no background or sales facilities to attract the confidence or interest of the publisher.

The most advantageous spot to print New Orleans would be at Lufkin.

We will however, print the job anywhere that policy dictates that it should be printed.

Kindest regards,

J. W. KOESSLER,
President.

JWK:br

Extracts of "A" made for Mr. Hornady and Times-Picayune follow-up

3297 [p. 99 for ident, H. T. NOEL, Official Reporter,
U.S. District Court.]

Memorandum:

DECEMBER 9, 1955.

I practically read everything in my self-memorandum of December 9 to Mr. Koessler when he was in my office this morning. I have every reason to believe that we are not going to have any trouble in agreeing on practically all points which we cannot commit to a contract.

In an overall way, Mr. Koessler supported my feeling that we would like to look upon him and Greater Buffalo Press in the same light that we have always looked upon our relationship with ICP for more than 30 years and I think this will come to pass.

The contract draft which has been re-submitted to him is now in the hands of his lawyer and he promised to have it returned to us soon. Then we'll have to see what if any changes are made in it.

I talked to him about the relationships with Chicago Tribune, NEA and especially the Harte-Hanks deal. Mr. Koessler assured me that he would go along with us in working out the Harte-Hanks problem. I made it clear to him that I didn't think he should have negotiated any kind of a deal with this group,

that our net was over \$300 weekly, that on the basis of 50¢ per thousand we would only receive about \$150 from him and therefore would be out in round figures \$150 weekly. This we will work out. I think we'll come out of it even at least. He feels that he should go ahead with the printing of the supplements at Buffalo even though it's going to cost him money, but when the Lufkin plant is operating it is understood that we will make the contract with Harke-Hanks.

On Chicago Tribune printing he said that any new business they print for them we are to receive 50¢ per thousand.

I don't think we are going to have much difficulty as the result of GBP's deal with NEA and Buffalo Color Press. Most of our problems not outlined in the contractual understanding I feel can be worked out as they arise.

I think we cleaned up everything pretty well and we are pretty much agreed that the only one we might have to fear at present is Wilmington, Dela. They only have one newspaper run now and are starving for newspaper supplement printing. We will have to watch out for them. Mr. Koessler also emphasized the importance of our lining up all open new business such as Tampa, Jacksonville, New Orleans, etc., as quickly as possible. Otherwise Wilmington might be a threat.

Simply can't serve two masters. NEA is an arch enemy.
FJN:mec

3208 [P-102 for ident., P-102 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

JUNE 19, 1957.

Mr. J. D. GORTATOWSKY,
Hearst Newspapers,
959 Eighth Avenue,
New York 19, New York

DEAR GORTY: Even at the risk of being repetitious I want to comment further about our readyprint business.

My suggestions and recommendations as to what I thought should be done concerning this Syndicate activity are matters of record going back five years and more. Some of the dire things that could happen have happened and there are indications that the situation can become even more serious.

I am not the least bit sanguine about the kind of a deal that can be eventually be worked out with Mr. Koessler. There is every evidence that he wants to stall as long as possible. He is sitting pretty. I think we have been too conciliatory with Koessler and it may be that is likely to be the procedure because we can only lead from weakness.

The pending contract draft leaves several matters to be attended to. One is the correction and insertion of certain lists of newspapers including, I take it, a list of our own readyprint clients. There is, too, what I regard as the all important matter of the volume to be printed for us. Whether it's 75% rather than 85% is in one respect a detail, but if we don't specify this volume as "present or current volume" it would forbid the organization perhaps from having its own plants. Putting it another way, if it should be decided to print the comic supplements of the Hearst newspapers conceivably that could be involved. Our contract with ICP specifies they are to print for us exclusively and that seems to be a bone of contention. I believe the Syndicate should have the right as stated in the contract to say whether or not other runs are to be placed in the Sylacauga plant. I also think that the printing price specified in the pending draft is too high. I seem to have evidence

that Koessler is charging some of his customers less than he would have the right to charge us, notwithstanding the fact that he is dealing with newspapers individually, whereas his arrangement with the Syndicate is on a wholesale basis involving the sum total of millions of fours. Why shouldn't the Syndicate have a favored nation price? In discussing this with Koessler I get what I think really amounts to a lot of double-talk, delaying tactics, etc.

I don't think I'm a quitter, but in view of my waning enthusiasm, I wonder whether you would care to consider having someone else conduct the negotiations with Mr. Koessler.

I don't see how the organization can gain strength in its negotiations with Koessler unless he is made to feel that he has something to fear. That fear might exist if we had a plant or two of our own. Even if it cost money to do this and diminished profits, wouldn't that be better than the eventual loss of most, if not all, of our readyprint business?

The organization has never made any capital investment in readyprinting. It has been a sales agency arrangement only and

has been yielding at the rate of a million plus each year. A newspaper property earning a million a year would be much sought after and the purchase price would probably be in the neighborhood of ten million. But, if there is any question about this cut it in two. The Syndicate which for more than a quarter of a century has been number one in the readyprint field is now at best number two, and quite helpless. Newspaper history clearly emphasizes the difficulty, in fact hopelessness of regaining a lost position. There is plenty of current evidence to substantiate this.

If Koessler, because of what he has done the past few years, were to be attacked, in my opinion he would lose, but there is the danger, I suppose, of our becoming an accessory. Here is another reason why I think that if we were in the readyprint field with plants of our own it would restore a competitive aspect and certainly that wouldn't be discouraged in Washington.

Permit me to inject an example of what we have to contend with. During the past few years the Newhouses have given me a rough time in my readyprint negotiations with them. They are getting rougher. Theodore Newhouse, who is now insisting on a reduction on the Jamaica run and perhaps Newark, uses as his principal weapon the rate charged Newhouse papers at Syracuse and St. Louis by Greater Buffalo Press. In collaborating with Mr. Koessler about this I run into all kinds of double-talk. I'm to have a meeting tomorrow with Newhouse and I've got to fight hard against going into it like a whipped dog.

3300 If you ask the question where is there a printing plant we can buy at a reasonable price. I can only say that there are undoubtedly plants available for purchase. In one case at least I know that Waterbury can be had and I believe that some time ago I advised you that the price might be a million and a half or two million. There's a plant at Wilmington, Delaware which I have often referred to. There's World Color at St. Louis. And then there's San Bernardino. But, how can the possibilities be definitely developed unless there is an inclination to want to do this very thing?

Do you suppose it would be possible to upset the Greater Buffalo Press—International Color Printing Company deal? Could either one or both of the Hearst comic supplement printing plants at Chicago and San Francisco be utilized either where

they are or at other locations perhaps eventually? What is likely to happen in Chicago if in the course of time the printing of THE AMERICAN there were to be abandoned?

This letter is quite long but the problem is big. Would you care to review some of the more detailed memoranda which I have written on this subject during the past several years?

Sincerely yours,

F. J. NICHOL.

FJN:mec
cc: F. C. McLearn

3301 [For ident., P-103 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

AUGUST 3, 1953.

MEMORANDUM ON SAN FRANCISCO AND CHICAGO COLOR PLANTS

Met last week in New York with Mr. Nicht, Mr. Burns, Mr. Padulla, business manager of American Weekly; and Oscar Bondy, production manager. Purpose of the meeting was to obtain from American Weekly prices for printing Portland Oregonian comics; also supplements for other West Coast newspapers. Price quoted by Mr. Bondy was considered by Mr. Nicht to be too high. Average for 12, 14, and 16, about \$5.50, before profit, or overhead costs.

Mr. Padulla made it clear that American Weekly people still consider operation of their printing plants a headache; that their printing costs are too high. I don't know that they are, considering the kind of work desired. So far I haven't heard any figures on their actual cost per thousand four pages papers.

Mr. Padulla expressed the belief that American Weekly would like to get rid of printing, by any of the following methods:

- (1) Turn their plants over to King Features, to be operated by King.
- (2) Turn their presses over to Hearst papers in either Chicago, San Francisco or Los Angeles, the papers to operate plants rather than American Weekly.
- (3) Sell their plants to any outsider who would then print for American Weekly.

I got the impression that the two plants are on the books of one of the Hearst companies at about \$6,000,000 and that by a mere bookkeeping twist of the wrist they would be turned over to King Features—for no payment of cash. There would still be a depreciation charge of \$120,000 yearly and King would have to take that. In one way it wouldn't be too hard to take because it could be charged against profits.

It was Mr. Padulla's idea that once owning the plants King Features could print American Weekly comics; also comics for other newspapers. It would seem that King would want a profit on the printing; therefore the cost to American Weekly would be even higher than at present. Of course if King gets the plants for nothing they might be willing to print American Weekly comics without profit; since they would then have equipment with which to print for others.

But would they be able to compete successfully for other business while using the American Weekly plants? A very big and a very important question. Unless the plants are moved the man hour rate would be the same as at present; also the manning. In fact the rate might be even higher, especially in S.F. because a commercial contract would be signed. The moving of plants would be expensive and no one could be absolutely certain as to what rates would be in another city. It would be a pretty much of a gamble.

Another factor is the lack of flexibility for the kind of work King must do. In each plant Hearst has four twelve cylinder presses. They can be operated all together or singly. Eight cylinders of each machine can be used for 16 standards. However, when printing twelves it would be necessary to double the stereotype and double register because of lack of split delivery on folders. Can split delivery be installed. Possibly, but not very easily.

When the bottom eight cylinders are used for 16 standards the top four cylinders must be idle. When fourteen pages are printed they would use the bottom eight cylinders and the top four. When 3302 two presses. Double plating again necessary. When fourteen pages are being printed the top four cylinders of each press is idle. More capacity wasted.

Mr. Bondy said the San Francisco plant can print 35,000 four's. He was right, provided only twelves are printed. If sixteens are produced the total capacity is cut by thirty

cent and when fourteens are printed the capacity is cut still further.

It might appear that if the presses were moved the top four cylinders could be put on floor but in it so happens that presses are built in such manner that the top four cannot be moved.

Have just checked the manning tables in Chicago and I find that to run an eight cylinder press they need eight journeymen and two boys. Three more than Wilkes-Barre and four more than Buffalo.

To run twelve cylinders, for a twelve page section, Chicago needs ten men and two boys. We need eight men and four boys. Dunkirk calls for one less.

The Chicago rate per hour is \$3.00. Buffalo and Wilkes-Barre \$2.83, and Dunkirk \$2.70.

Dunkirk press crew cost about \$13.00 per press hour for journeymen. The Chicago cost is \$24.00. Wilkes-Barre Cost \$15.00.

It can readily be seen that anyone using the Chicago presses with Chicago rates and manning will have a tough time competing with Buffalo, Peoria and Wilkes-Barre, even with higher speed presses.

I am enclosing copy of letter written some time ago about S. F. and Chicago.

JOSEPH J. GORMAN.

3304 This letter is a more or less General Discussion of the San Francisco proposition. Circulation of the Hearst newspapers now printed in San Francisco is as follows:

San Francisco.....	600,000
Los Angeles.....	750,000
San Diego.....	250,000
Total	1,600,000

Since 14 page sections are usually printed, the total number of 4 page supplements in San Francisco is 5,600,000 on the average.

The total printing in Chicago is as follows:

New York	1,000,000
Boston	675,000
Pittsburgh	500,000
Baltimore	500,000
Albany	125,000
San Antonio	125,000
Milwaukee	100,000
Chicago	100,000
Detroit	125,000
Total	4,850,000

Total is four on the basis of 14 page section average 15,775,000. Total printing in four in Chicago and San Francisco plants 21,375,000.

What is the present equipment in San Francisco? Four six deck Hoe color presses geared for at least 30,000 per hour and running at 32,000 per hour. All steel cylinders, roller bearings and certainly up to date for the kind of printing Hearst Management is doing for its own newspapers.

Are the Hearst presses in Chicago and San Francisco readily adaptable for our type of printing? No, they are not, for the reason that we require 4 clips on the inside of each cylinder to take care of half plates; we require an alternating delivery and folder so double plating will be avoided; we require that the sheets be split at roll to give flexibility of roll width; and finally we require that the two top decks be separated from the bottom 4 to allow us to print 8 page standards, 16 page tabloids, etc.

Could the Chicago or San Francisco presses be readily adapted for our kind of work? No. They could not. It would be possible to split the sheet at the roll—extra clips could be put on the cylinders and an alternating delivery could be installed of the job of taking the two top decks down and making a separate press out of them would be almost impossible because of the present structure of the machine.

Did we rebuild Hoe pancoast six deck presses so as to use four decks and two decks separately?

Yes.

3304 Then why isn't it possible to do the same with the Chicago and San Francisco presses? Because the presses which we rebuilt have one carriage for each two decks. In other words, the presses were built in three units of two decks each. The Chicago presses are built in two units of three decks each and since four decks are necessary to print four colors it would be almost impossible to get what we want from the present machines.

Why were the Chicago and San Francisco presses so designed? I really don't know the reason for the use of only two carriages for six decks unless it is to give more head room to the men moving plates. If only 12 pages were to be printed and never 14's or 16's the present arrangement of six decks would not be too bad. However when 16's are printed, the two top decks are wasted. The same is true when 14 pages are printed. It would be impossible to print 8 page standards without double plating and printing book fold. In short, the presses are satisfactory for 12 pages and they are alright for 16's or 14's provided you don't mind wasting two top decks. But they are practically impossible for any other size sections.

How are 12 pages now printed on the Hearst presses? Each six deck press, double plates, printing one 12 page section.

How do we print 12 pages? We have one 4 deck press and one 2 deck press, combined. We use the split delivery and print either two releases at once or two papers of the same size.

Could the present Hearst presses be handled in the same manner? Yes, for 12 pages, provided split delivery is installed.

How do we print 14 pages? We run two 4 deck presses, using all cylinders.

How many rolls? One double roll and one three quarter roll.

How do the Hearst presses print 14 pages? Exactly the same as we except the two top decks on each six deck press are wasted.

What is the present total capacity of the San Francisco plant? Oscar Bondy told me that they run at 32,000 per hour, have a net running speed of 28,000 after roll changes, etc. and 23,000 after makeready and registry time. Therefore if all presses were running 12 pages (that is the only way to get full use of all cylinders) each six deck press would produce 60,000 four page sections per hour. Since there are four six deck presses, the total production would be 276,000 per hour. There are 144 hours per week but on a 7½-hour basis only 135 can be used. Therefore working 135 hours at 276,000 per hour, the four presses could produce over 30,000,000 four page sections weekly.

306 This production is based on the use of hard packing and makeready. Without hard packing or makeready, the total production could be very sharply increased. It is

quite apparent that the San Francisco plant is using only a small part of its potential capacity.

As the presses are now built, it is not likely that the total capacity should or could ever be used because you would never have all 12 page sections.

Since the Chicago plant is running three times as much as San Francisco it is obvious that much of the plant capacity is being made use of.

When I went to San Francisco during the early part of last year, it was with the idea of figuring out the cost of printing other supplements in the Hearst plant. Mr. Bondy prepared an estimate at that time which you decided was too high for King Features. He figured on every run being about 200,000 circulation.

	Circulation
Portland Journal, 16 standard.....	880,000
Portland Oregonian, Comb. Mag. & comic.....	2,400,000
San Francisco Chronicle, 16 standard.....	1,200,000
San Diego Union, 16 standard.....	480,000
Salt Lake City, 16 standard.....	500,000
Arizona Republic, 16 standard.....	400,000
Tacoma Ledger, 16 standard.....	288,000

You will note that most of the above papers are 16 standards and that is because they have standard size 8 cylinder presses. If these were to be printed on the San Francisco present machine, the two top decks would be wasted.

If Hearst general management is satisfied to waste two top decks could the present machines be used for printing the papers mentioned? Yes, after adding clips, alternating delivery and a few other things.

Could the above paper be printed in the San Francisco plant at a price which would be possible for you to sell? Mr. Bondy has already given you a price and I believe it was too high. It did include a considerable amount of depreciation and so forth which might be changed now.

Has our machinist examined Chicago presses as promised? Yes, and he believes that the job of separating the two top decks from the bottom four would be practically impossible to accomplish. I guess it wouldn't be impossible but that cost would be tremendous.

At an earlier date I agreed to estimate the cost of printing Hearst own supplements, also other supplements in the San Francisco plant. I have not done so because it would be

3306 a waste of time. This company, or any other company would have the same contract as Hearst with the various unions. We would have to add our profit and King Features would have to add a profit. I do not think we could print in the San Francisco plant much cheaper than Hearst is now doing. I have full confidence in the efficiency in the Hearst production staff now handling the San Francisco plant.

JOSEPH J. GORMAN.

3307 [——— for ident., P-104 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

SEPTEMBER 29, 1954.

Memo To: J.J.G. (Six Extras)

Copies: John Booth, Bessie, Vince, Tom Brennan, Gerry

I have gathered information relative to the Hearst printings as per your recent memos on this subject. So far as I can learn the overall situation is about as follows:

Puck—THE COMIC WEEKLY is used by twelve Hearst Sunday papers. The makeready of each is similar but not necessarily identical. Each of the papers is allowed to accept local advertising. They all run the same number of pages for a given release. Out of fourteen releases checked, thirteen were 14-page standard size sections and one was a 12-page standard size section. I understand there are occasions when they require sixteen-page standards and maybe once a year 18-pages or possibly 20-pages. In all cases, they insist that supplements be divided into two sections. Fourteen-page standards are delivered as an 8-page bookfold and a 6-page. Twelve-page standards are delivered as an 8-page bookfold and a 4-page. Nine of the papers are printed in the Chicago Color Plant and three in the San Francisco Color Plant.

THE SATURDAY HOME COMICS is USED by the Chicago American and the New York Journal American. Until very recently, Saturday Home Comic sections were printed in the Chicago Color Plant but are now being printed by the individual newspapers. As a matter of fact, I understand the New York Journal American is printing in their own plant October 17th release as their first printing.

All of the Hearst papers (in all cases when referring to Hearst papers, I am excluding the New York Mirror) use the Pictorial Review section and Pictorial Review Sections are printed for each paper in their own plant with the exception of the Pittsburgh Sun-Telegraph which we print.

In the addition to the above mentioned sections, three papers use a tabloid comic section on Sundays. These three papers are the Pittsburgh Sun-Telegraph, San Antonio Light and the Baltimore American. We print Pittsburgh and San Antonio and Baltimore prints their own tabloid comic in conjunction with [continued at pp. 1845-47]

3311 [P-105 for ident., P-105 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

NOVEMBER 20, 1959.

Mr. J. W. KOESSLER,
Greater Buffalo Press,
302 Grote Street,
Buffalo 7, New York

DEAR WALTER: In view of Mr. Nicht's dream about operating the Hearst plants in San Francisco and Chicago I thought it might be a good idea to drop in on the San Francisco plant to see how they are doing. I talked to Harold Tweet, Plant Superintendent.

Plant has two presses, twenty-four cylinders each. Only twelve cylinders are operated. Mr. Tweet told me about efforts three years ago to obtain printing of San Francisco Chronicle and Oakland Tribune, but he lost out on account of higher cost, despite fact that there would be a considerable transportation saving as against San Bernardino, also much better quality.

San Francisco is now printing for Los Angeles, San Francisco Examiner, The Seattle Post-Intelligencer—twelve pages each—rarely fourteen pages. For San Francisco they print 470,000 circulation, for Los Angeles 686,000 circulation and for Seattle 244,000 circulation, a total of about 4,200,000 four page sections.

Hard packing and makeready is used. Proofs are pulled on a proof press at the beginning of the week and two men work all week on makeready. When I was there six years ago they were using five men.

Hourly cost is about \$3.25 days and \$3.60 nights. Manning is as follows:

Five cylinders, 2 rolls of paper, 6 men.

Five cylinders, 1 roll of paper, 6 men.

Seven cylinders, 1 roll of paper, 7 men.

Seven cylinders, 2 rolls of paper, 8 men.

Eight cylinders, either 1 or 3 rolls of paper, 8 men.

Nine cylinders, either 2 or 3 rolls of paper, 9 men.

Ten cylinders, 2 rolls of paper, 9 men.

Ten cylinders, 3 rolls of paper, 10 men.

Eleven cylinders, 2 rolls of paper, 10 men.

Eleven cylinders, either 3 or 4 rolls of paper, 11 men.

Twelve cylinders, 3 rolls of paper, 11 men.

Thirteen cylinders, either 2 or 3 rolls of paper, 12 men.

Fourteen cylinders, 3 rolls of paper, 13 men.

I do not have the stereotype or mailer cost, but the manager tells me that their rates are very high and they use far more men than are necessary. All things considered, it would appear that operation of this plant would be quite a problem for Mr. Nicht or anyone else.

Perhaps you know that twelve of the forty-eight cylinders which were formerly operated in Chicago are now printing in Seattle, and they have been used to print the Color Review circulars and other sections with color.

Regarding the San Francisco Chronicle. Back in 1956, when I was trying to get the work we agreed to print ten page standard size sections at the rate of \$5.47 per thousand and fourteen page sections at the rate of \$5.66 per thousand. We told Nicht that tens and fourteens would have to be printed in Wilkes-Barre, and the transportation cost would be greater than \$3.18 per cwt. We would print sixteen page standards in Peoria at the rate of \$5.10 per thousand four page sections.

On January 19, 1956, I wrote you a letter telling you about our negotiations for the San Francisco Chronicle, and I gave you a copy of a lengthy memorandum prepared August 3, 1953, when I visited San Francisco at Mr. Nicht's request. I have

extra copies in case you should ever want to look over the old data.

Best regards.

Sincerely yours,

JOSEPH J. GORMAN.

JJG/HLM

cc: Kenneth Koessler

Jack Koessler

P.S.—I am enclosing copy of letter written by Oscar Bondy to Johnny Padulo on June 1, 1953, which contains Bondy's figures on the cost of printing Portland Oregonian in San Francisco.

3313 [———for ident., P-106 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

MARCH 16, 1953.

Mr. FRANK NICHT,
King Features Syndicate,
235 E. 45th St.,
New York 17, New York

DEAR FRANK: When we met with Johnny Padulla and Oscar Bondy a few weeks ago, it was agreed that I would do four things:

1. Check on the possibility of adapting Chicago presses for the kind of work we are now doing.
2. Estimate cost of printing Hearst own supplements, also other supplements, in the San Francisco plant.
3. Estimate cost of printing Hearst supplements on present Hearst presses in a building located in the city where a cheaper labor rate might be obtained.
4. Estimate cost of printing Hearst supplements, also other supplements, on rebuilt presses, in a building located in a city where cheaper labor rate might be obtained.

Since we had the meeting with Johnny and Oscar I had conversation with Gene Robb about the Chicago printing. Also I had meeting with you and it was agreed that each proposition should stand on its own feet and that the Southern problem should be disposed of first.

So far as South is concerned, I have now given you all information promised Mr. Lewis except transportation cost and I expect to complete that this coming week.

Because of considerable illness in the office and also as a result of production troubles which have taken a good part of my time I have not had many hours to devote to the new plant. However, all things considered, I think I got the Southern information through pretty fast. I believe it is less than a month since we had meeting with Mr. Lewis.

This letter is a more or less general discussion of the San Francisco proposition. Circulation of the Hearst newspapers now printed in San Francisco is as follows:

San Francisco.....	600,000
Los Angeles.....	750,000
Seattle	250,000
	<hr/>
	1,600,000

Since 14 page sections are usually printed, the total number of 4 page supplements in San Francisco is 5,600,000 on the average.

3314 The total printing in Chicago is as follows:

New York.....	1,000,000
Boston.....	675,000
Pittsburgh.....	500,000
Baltimore.....	350,000
Albany.....	125,000
San Antonio.....	125,000
Milwaukee.....	250,000
Chicago.....	900,000
Detroit.....	625,000
	<hr/>
	4,550,000

Total is fours on the basis of 14 page section average 15,775,000. Total printing in fours in Chicago and San Francisco plants 21,375,000.

Because I think I can give you the information with fewer words this way, I am going to use the question and answer form. It is easier for me that way and I hope you will bear with me.

What is the present equipment in San Francisco?

Four six deck Hoe color presses geared for at least 36,000 per hour and running at 32,000 per hour. All steel cylinders, roller bearings and certainly up to date for the kind of printing Hearst management is doing for its own newspapers.

Are the Hearst presses in Chicago and San Francisco readily adaptable for our type of printing?

No, they are not, for the reason that we require 4 clips on the inside of each cylinder to take care of half plates; we require an alternating delivery and folder so double plating will be avoided; we require that the sheets be split at roll to give flexibility of roll width; and finally we require that the two top decks be separated from the bottom 4 to allow us to print 8 page standards, 16 page tabloids, etc.

Could the Chicago or San Francisco presses be readily adapted for our kind of work?

No. They could not. It would be possible to split the sheet at the roll—extra clips could be put on the cylinders and an alternating delivery could be installed of the job of taking the two top decks down and making a separate press out of them would be almost impossible because of the present structure of the machine.

Did we rebuild Hoe pancoast six deck presses so as to use four decks and two decks separately?

Yes.

Then why isn't it possible to do the same with the Chicago and San Francisco presses?

Because the presses which we rebuilt have one carriage for each two decks. In other words, the presses were built in three units of two decks each. The Chicago presses are built in two units of three decks each and since four decks are necessary to print four colors it would be almost impossible to get what we want from the present machines.

Why were the Chicago and San Francisco presses so designed?

I really don't know the reason for the use of only two carriages for six decks unless it is to give more head room to the men moving plates. If only 12 pages were to be printed and never 14's or 16's the present arrangement of six decks would not be too bad. However when 16's are printed, the two top decks are wasted. The same is true when 14 pages are printed.

It would be impossible to print 8 page standards without 3315 double plating and printing book fold. In short, the presses are satisfactory for 12 pages and they are all right for 16's or 14's provided you don't mind wasting two top decks.

But they are practically impossible for any other size sections.

How are 12 pages now printed on the Hearst presses?

Each six deck press, double plates, prints one 12 page section.

How do we print 12 pages?

We have one 4 deck press and one 2 deck press, combined.

We use the split delivery and print either two releases at once or two papers of the same size.

Could the present Hearst presses be handled in the same manner?

Yes, for 12 pages, provided split delivery is installed.

How do we print 14 pages?

We run two 4 deck presses, using all cylinders.

How many rolls?

One double roll and one three quarter roll.

How do the Hearst presses print 14 pages?

Exactly the same as we except the two top decks on each six deck press are wasted.

What is the present total capacity of the San Francisco plant?

Oscar Bondy told me that they run at 32,000 per hour, have a net running speed of 28,000 after roll changes, etc., and 23,000 after makeready and registry time. Therefore if all presses were running 12 pages (that is the only way to get full use of all cylinders) each six deck press would produce 69,000 four page sections per hour. Since there are four six deck presses, the total production would be 276,000 per hour. There are 144 hours per week but on a 7½ hour basis only 135 can be used. Therefore working 135 hours at 276,000 per hour, the four presses could produce over 30,000,000 four page sections weekly.

This production is based on the use of hard packing and makeready. Without hard packing or makeready, the total production would be very sharply increased. It is quite apparent that the San Francisco plant is using only a small part of its potential capacity.

As the presses are now built, it is not likely that the total capacity should or could ever be used because you would never have all 12 page sections.

Since the Chicago plant is running three times as much as San Francisco it is obvious that much of the plant capacity is being made use of.

When I went to San Francisco during the early part of last year, it was with the idea of figuring out the cost of printing

other supplements in the Hearst plant. Mr. Bondy prepared an estimate at that time which you decided was too high for King Features. He figured on every run being about 200,000 circulation.

3316 What large runs on the West Coast might be available for the San Francisco plant?

	Circulation
Portland Journal (16 standard)-----	880,000
Portland Oregonian (Comb. mag. & comic)-----	2,400,000
San Francisco Chronicle (16 Standard)-----	1,200,000
San Diego Union (16 standard)-----	490,000
Salt Lake City (16 standard)-----	500,000
Arizona Republic (16 standard)-----	400,000
Tacoma Ledger (16 standard)-----	288,000
	6,148,000

You will note that most of the above papers are 16 standards and that is because they have standard size 8 cylinder presses. If these were to be printed on the San Francisco present machine, the two top decks would be wasted.

If Hearst general management is satisfied to waste two top decks could the present machines be used for printing the papers mentioned?

Yes, after adding clips, alternating delivery and a few other things.

Could the above papers be printed in the San Francisco plant at a price which would be possible for you to sell?

Mr. Bondy has already given you a price and I believe it was too high. It did include a considerable amount of depreciation and so forth which might be changed now.

Has our machinist examined Chicago presses as promised?

Yes, and he believes that the job of separating the two top decks from the bottom four would be practically impossible to accomplish. I guess it wouldn't be impossible but the cost would be tremendous.

At an earlier date I agreed to estimate the cost of printing Hearst own supplements, also other supplements in the San Francisco plant. I have not done so because it would be a waste of time. This company, or any other company would have the same contract as Hearst with the various unions. We would have to add our profit and King Features would have to add a profit. I do not think we could print in the San Francisco plant much cheaper than Hearst is now doing. I have full confidence

in the efficiency in the Hearst production staff now handling the San Francisco plant.

Sincerely yours,

JOSEPH J. GORMAN.

[See pp. 1848-1949 for attachment]

JJG:njb

3320 [——— for ident., P-108 in evid., H. T. Noel, Official Reporter U.S. District Court.]

cc: Mr. Govin, Mrs. Scofield, Mr. McLean, Frank Nicht, John Booth, Joe Clinton, Bessie, Vince, Tom, Gerry

JULY 19, 1954.

MR. RALPH WATT,
Coosa River Newsprint Co.,
Coosa Pines, Alabama,

DEAR MR. WATT: I think you can readily understand that before final and conclusive decision, the matter of setting up a printing plant in the new area can be made, a great number of problems must be carefully considered. I have already given much time to most of the questions which need answering and I am now convinced that arrangements can be worked out which will be beneficial to all concerned. You have the paper to sell—King Features and International Color Printing Company have the use for it. There are some perplexing details, certainly, but I hope they can be worked out. We know now approximately how much can be saved in newsprint cost. We have a good idea as to the transportation saving possible but this angle needs further study by reason of the fact that Childersburg and Coosa Pines have no passenger service and therefore no baggage express service.

We know exactly what we could save using baggage, even if we trucked into Birmingham, and we have a fair idea as to savings by using truck. We need more definite knowledge of this but not sufficiently to hold up plans.

I spent the past several days in the Coosa River area and have been in touch with many truckers about haulage to the various newspapers which we serve in the Southeastern part of the country. Our principle problem is labor cost. Since we have no accurate figure as to what labor rates might be, we have worked out a schedule of costs based on estimate and it

looks okay. Before proceeding to actually contact labor I wished to know more about living conditions, facilities for recreation, worship and education. Childersburg seems rather scattered and, as a town, might not appeal to men accustomed to living in fairly large cities. With this thought in mind, I visited Sylacauga and Talladega. I checked the time of travel between Coosa and both cities and found it requires about 20 minutes to one and 30 minutes to the other. I was most agreeably surprised by Sylacauga. It seems to have everything for comfortable living and is certainly a very pretty place. I checked personally the Churches and schools. All were very fine.

I also visited the Chamber of Commerce and had a most pleasant and beneficial visit with the manager, who happens to be first cousin to Mr. Hornady of King Features Syndicate.

For some reason Talladega did not impress us as favorably as Sylacauga. Nevertheless, I obtained full information 3321 about the place. Mr. Hornady's brother, Cecil Hornady, is owner of the newspaper and the radio station in Talladega.

Because of the outside possibility there might be complications in the idea of our union groups occupying quarters on the same grounds with your unions, or for some other reason unknown at this time, I checked with officials of both cities about buildings available. I expect to hear from them further and I have done a little advertising in the Birmingham, Talladega and Sylacauga newspapers.

I will now try to answer some of the questions you asked at meeting with Mr. Nicht and me.

ROLL SIZE—We use 29" and 58". 32 lb. basis, 40" diameter. While visiting with Mr. Wakeman the other day, we talked of the idea of testing several cars and he said he would definitely want to do that. He suggested I send in an order for two cars of our size and I wish you would consider this to be such an order. I would like to have one car of 29" rolls, 2 rolls in a single wrapper, sent to our Peoria plant, International Color Printing Company, 2305 S. Adams St., Peoria, Illinois. I wish you would send one car of 58" rolls to International Color Printing Company, 268 George Ave., Wilkes Barre, Pa., Lehigh Valley delivery. I think we should be both absolutely certain that the paper which you are now making would be fully satisfactory for a comic printers needs.

WATER—We are using very little, just for the nickel tank, showers and casting box. Mr. Wakeman pointed out that there is no water supply in the area of the mill except what you take from the river and if a printing plant is located on your property you will arrange for the water supply—and also for power. Later on I will be able to tell you more about power needs but I judge from the size of your plant there will be no question whatever about the ability to handle.

NUMBER OF EMPLOYEES—The answer to this depends on the number printed, type of presses used, etc. Of our total circulation in the South we could save transportation on about 8,000,000 four page sections weekly. In newsprint this means 200 tons. There may develop that we could increase the circulation over and above what we now estimate. When running at full capacity printing 8,000,000 four page sections weekly we would use about 70 pressmen and stereotypers, (skilled) and 80 wrappers, drivers, flyboys, (unskilled). Total about 150 men at 37½ hours per week. Naturally it would take time to build up to this point.

I have already asked Talladega and Sylcauga about living facilities. Do you suppose you could obtain similar information in Childersburg and Coosa Pines? Would like to know about schools, Churches, educational facilities, recreational points, etc.

SIZE OF BUILDING—Am not prepared to say, since I am still uncertain about layout of equipment, probably about 10,000 square feet for working space and as much more for storage. It seems to me that a printing plant even in Coosa River would need storage for the obvious reason that there is a possibility of a shutdown of paper mill and I don't believe that you have very much storage capacity.

Since our Southern business comprises all kinds of runs we have to consider flexibility of equipment and this can best be accomplished by using a number of smaller presses which can be run individually or in combination. One of the reasons I went to the Coosa area last week was to examine the layout of your mill and grounds. With us, building size or shape is not inflexible and it might be possible to work out plans so
322 as to suit the space you have available. Mr. Wakeman and I looked at ground probably about 200 yards from your main building which might be satisfactory.

TONNAGE TO VARIOUS DESTINATIONS—We are preparing a schedule to be sent to various truckers. I will forward copy to you. This schedule shows tonnage to destinations.

I repeat my statement in the first paragraph—if you have the tonnage for sale, King Features and International Color Printing Company should, unless something unforeseen develops, be able to work out plans to use it. In this regard we are most optimistic.

Thanking you for your very kind cooperation I remain
Sincerely yours,

JOSEPH J. GORMAN,

JJG:njr

3323 [-----for ident., P-100 in evid., H. T. Noel,
Official Reporter, U.S. District Court.]

JULY 10, 1934.

Joe Clinton, John Booth, Tom, Bessie, Vince, Gerry, Mr. Nicht,

Mr. B., Mrs. Scofield, Mr. Govin, Mr. McLean

Subject: Details on living conditions, recreation, educational, and worship facilities in Sylacauga and Talladega.

If the time should come when a plant is established in Coosa River it will be necessary for men and their families to live in the best possible surroundings. It is for the purpose of checking on living conditions in and around Coosa River that I spent several days in Alabama last week. The newsprint mill is located in Coosa Pines, about 4 miles from Childersburg. Childersburg is approximately 40 miles from Birmingham. Childersburg is an old Southern town which has received more or less of a boom as a result of the building of several large mills in the area but it is not what one would call a very attractive town. There are new developments going up here and there, fostered by Coosa River Newsprint Company and the North American Rayon Company and in time Childersburg may be quite a place. However, it is true that now, about 35% of the people working in the Childersburg plants live in Sylacauga, 10% in Talladega and the balance in Childersburg and surrounding small towns.

I was very much impressed by Sylacauga and I checked the mileage. It takes just about 20 minutes from the Coosa River plant to the town of Sylacauga and about 30 minutes to Talladega. The highway is very good and the surrounding country-

side very pretty. As a matter of fact, the town of Sylacauga is much prettier than the average small Southern cities. I wasn't quite as well impressed by Talladega. For your information and also for our use in the future if the time should come when it may be necessary to ask men to live in the Coosa River area, I have obtained pamphlets from the Chamber of Commerce of Sylacauga and Talladega and I am giving you a copy with this memo. Childersburg does not have a Chamber of Commerce but I have asked the Coosa River to obtain as much information for me as possible. Regarding the recruiting of men for plants in the South, I am under the impression that it was a rather costly proposition for the Coosa River people, for the reason that there were simply no paper makers in the South and most of them had to be transported from Canada at the Company's expense.

I went out of my way to talk to a number of the people who formerly lived in New England and Canada and who are now living in Sylacauga and they all seemed very happy and contented. The General Manager of the Coosa River Newsprint Company told me that of 61 families he moved from the North, only one family did not stay and that was because the mother of the family was a professional skater and she had no place to practice.

The attached pamphlets give us some idea as to the general living conditions in the two principal towns, exclusive of Birmingham, which of course is a tremendous city, and the Coosa River territory.

While I was running from one town to another in a rented car, the temperature was in the neighborhood of 105° but even the southerners were suffering and I was led to believe that the heat was most unusual. We know that at the same time Dallas was having 105° and I believe that Kansas City, Missouri, Springfield, Illinois, Springfield, Missouri, and points in Wisconsin were even hotter than the area where I was working. The temperature in Talladega is reported to be an average of 63.3° throughout the year. Summer average 79.3 and winter average 47. I don't know exactly what they mean by winter and summer, that is, which months they include to arrive at an average. I do know that practically every office and restaurant in the whole area is air conditioned. The Sylacauga Chamber of Commerce told me that the average summer temperature is

70.6° the average winter temperature is 50° and the year round average 63°. I am checking with the weather bureau in Scranton to determine how much difference there is between Pennsylvania and Alabama.

JOSEPH J. GORMAN.

3926 [-----for Abent., P-110 in eaid., H. T. Noel,
Official Reporter, U. S. District Court.]

INTERNATIONAL COLOR PRINTING CO.,
NEWSPAPER COMIC AND MAGAZINE SUPPLEMENTS.

Phone, Wilkes-Barre 47871, August 11, 1934.

12 Color Presses—Total Capacity, 31 Million Four-Page Sections Per Week, Branch Plant, 107 South Street, Peoria, Ill., Phone, Peoria 4-3013.

MR. FRANK NIGHT,
King Features Syndicate,
233 E. 45th St.,
New York 17, New York.

DEAR FRANK, I have been studying your letter of July 26th regarding speedy work on plans for Southern plant. You said, "I am anxious to be in a position to go ahead with our part of the program which, of course, involves client relations and sales. I suppose the first thing necessary is to feel sure that we have a deal with some mill. I presume that if you decide it would be best to have the plant next to or nearby a mill that the mill wouldn't make an arrangement with any other supplement printer. Like you I would like to proceed with speed, but great as my desire along this line may be I must also proceed with caution. Setting up an operation like this cannot be done over night. We have to decide what type presses are needed, what arrangements can be made with unions, which transportation companies and last but not least what arrangements can be made with mill."

Now let us take each item separately. First and most important we need to be certain of the mill contract, that is, the source of supply. We know that as of May 26th the mill people were just as anxious to sell to us as we were to buy. I haven't noticed any change in attitude since. I had hoped to get to Birmingham this week, just for general conversation with Mr. Watt about what terms he has in mind, but when I called

make the date he had a previous engagement in Florida. I suppose that Mr. Watt may be somewhat surprised when he learns that International Color Printing Company and King features are not one and the same, and then again he may not be surprised. Certainly he and the other directors will want to know that if they make a contract with us it will be practically the same as making it with King. Perhaps we will get some line on this mill thinking when you and I talk with Mr. Wakeman in New York about August 18th.

Regarding labor.—It is now common knowledge that we are thinking about the South and I am meeting Tuesday morning with Wilkes-Barre unions regarding possible transfer of work. The low men on the security list are anxious to know something about our plans so that they can make plans of their own. I have been thinking of seeing International officers and probably will do that because I don't believe we are in position to attempt an open shop, at least so close to Birmingham. One might start with an open shop but it doesn't last very long that way. I have no doubt that already members of the Wilkes-Barre unions have contacted their International officers and probably have already contacted the people in Birmingham.

Regarding press equipment.—I am sure when we were in meeting up town I told you we planned that first of all we would rebuild two four cylinder width presses which we obtained from Baltimore. This work will probably take about a year's time. We have a double width press running in Wilkes-Barre which could be moved to Birmingham after the two four cylinder presses are in operation and then we have two more single width presses which could be moved. This sort of thing cannot be done without a great deal of planning. Certainly the job could not be completed within a period of less than two or three years. We have to determine exactly what equipment we are going to use so that we will be able to tell Cousa River people what kind of space we want and what kind of building will be required. The kind of presses we use depends on the kind of work available and, as you know, our Southern work consists of mostly small runs with many plate changes.

I would like to get all of this planning behind me and before I am going to proceed just as rapidly as possible.

Regarding flexibility.—When we speak about flexibility for Press 14's we have in mind two things—flexibility of equip-

ment and also flexibility of union contracts. In Peoria we print 12's and we do print some 10's but we cannot print 14's. In Wilkes-Barre we are now printing 10's, 12's, 14's and 20's so it is not a case so much of flexibility of equipment as flexibility of contract. Also, you must keep this in mind and you must believe me, it is most important that we be able to print 4 page standards, 8 page tabloids, 8 page standards, etc., and also be prepared to make large number of plate changes. Buffalo may print one or two 8 page standards. I don't think either Buffalo or Dunkirk is printing any at this time. They are not printing any 4 page standards and the only 8 page tabloids they handle are those which fit together with a few plate changes. Therefore, we apparently have flexibility for certain things that Buffalo does not have, but in the long run there is no doubt that Buffalo has greater flexibility of contract and probably greater flexibility otherwise. We are doing the best we can with what we have to work with and with the kind of profit that we are able to make. We are keeping in mind these facts: you are anxious to get started as soon as possible for psychological reasons as well as for reasons of safety. You want to get the greatest flexibility possible. We want to do both things and we also want to work out a contract which will put us in better shape to do these things than we have been in the past. Please be sure that I am giving every waking moment to development of plans for speedy operation in the South.

Best regards,

Sincerely yours,

JOSEPH J. GORMAN.

JJG:njr

3327 [——— For ident., P. 111 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

JANUARY 24, 1933

Memo to: Mr. Gorman, (Six Extras)

Copies: John Booth, Tom Brennan, Bessie, Vince, Roger

The following is report of trip to Georgia and Alabama made by Roger Zarbus, Tom Brennan and Joe Clinton.

Our first stop was in Atlanta, Georgia. We called on Mr. J. McHill, Jr., District Manager of Luria Engineering Company, 800 Peachtree Street, N.E., Atlanta, Georgia. Mr. McHill

works for Luria Engineering Company and is interested primarily in selling Luria building materials. This Company does not handle general contracting as such but if necessary would arrange with contractors on a sub-contract basis. If you were to want a Luria Building the normal procedure would be to buy the materials from the Luria Company for the walls and roof. Separate arrangements would have to be made with contractors for grading, foundation, electrical work, heating, etc.

We asked Mr. McMill many questions to get an idea as to price, materials, construction, etc. We told him that we were interested in a building of about 25,000 square feet of floor area. We figured on a building 80 feet wide and 320 feet long. In order to get maximum unobstructed floor area, we could get a building with an 80 foot span but for the purpose of getting maximum strength in the roof, it was decided it would be better to use two 40 foot spans with a center column. This would give the building two peaks. These buildings come in various heights, starting with an eave height of 12 feet. Going from the eave to the peak, the height of a 12 foot building goes to 10 foot clearance at the peak. A 16 foot building goes up to a center height of 23 feet and a 20 foot building to a center height of 27 feet. We have considerable literature covering specifications such as this.

The Luria people would not be interested in putting down foundation but their men would erect the building. The cost of a 12 foot eave building of corrugated 24 gauge hot dipped galvanized metal covered sides and roof would not exceed \$2.00 per square foot on our concrete. The reason we got the quotation on the 12 foot eave was because Roger thought it would be best for us to have a 2 foot concrete foundation wall above the floor to take the abuse and shock from rolls of paper, ink drums, etc. It follows that if we had a 2 foot foundation wall, we would then have a building height of 14 feet at the eave, with a center height of 21 feet. In order to house our presses, I am quite certain we need 3' per deck and if we use only four deck presses, we would need a height of 12', five deck presses 15', and if we would go to six decks we would need 18'. We will have to decide whether or not we would ever go to six decks or allow for the height in case we do. Somewhere along the line we were advised that insurance people like the sprinkler heads to be at least 3' above the contents. Another

item which we must consider is the height of the building as concerns newsprint storage. While at the Birmingham News we noticed they stored paper rolls three high, vertically. This appeared to be a very efficient way of storing newsprint because it utilized more of the area and the Birmingham News people felt they had less waste because they did not have the flat roll condition which they felt they got from storing horizontal. If we went three high, this would mean that we would need at least 15' for the roll and apparently 3' for clearance from the sprinklers. It would be well to keep this in mind—we were advised by the Butler people that their material cost is about 90¢ per square foot. It would seem there would be no additional labor cost in going from 14' to 16' and the material cost on the basis of 90¢ per square foot for material on a building, 80' by 320', would be about \$1,500 so that it would not seem to be wise to skimp on height.

We talked to the Luria representative about installation. They do not make any particular recommendation so far as the necessity for installation is concerned. He showed us a sample of the installation which they use. It was a blanket type fibre glass made by Owens-Libby Company. Cost for installation is approximately 25¢ per square foot and the number of square feet is generally figured by doubling the square footage in the floor area involved. Therefore, on a floor area square foot 3329 basis, the cost to installate would be approximately 50¢ per square foot. In a building such as we propose, we would not want to installate all of the storage area so the 50¢ would not apply for the full square footage involved.

The Luria Representative estimated the cost to air condition would be about \$1.25 per square foot of floor area. He did not think it would be necessary to air condition but if we did air condition then he advised that we should also installate.

He estimated the cost for heating, electrical work and sprinklers would be 25¢ per square foot of floor area.

In the case of air condition and heating, the cost would apply to that part actually covered and not necessarily the entire building since we would not air condition nor heat the storage area.

Regarding foundation. This man recommended a concrete floor, 4" thick, reenforced with 6 by 6 ten-gauge steel mats. For the two foot wall he recommended 8" concrete reenforced

with steel rods. To cover the cost of the floor and wall, he estimated a cost of 65¢ per square foot based on floor area.

At this point, we would have had the following cost:

Foundation -----	.65 per square foot
Building -----	2.00 per square foot
Air Conditioning -----	1.25 per square foot
Installation -----	.50 per square foot
Electrical Sprinklers -----	.25 per square foot
TOTAL -----	4.65 per square foot

Bear in mind that the air conditioning and installation and heating cost would not apply to the total floor area.

The above building cost was based on what Mr. McHill termed an ordinary complement of doors and windows and if it were necessary to add door and windows, the cost would rise proportionately. My impression was that additional doors and windows could be expensive.

We went with Mr. McHill to inspect a building which contained about 30,000 square feet of floor space. Looking at it our first thought was that it was far more space than we would ever need. The building appeared to be rugged enough and the only fault we found was the joint at the eave between the roof and the sidewalls. Both the roof material and sidewall material were corrugated. To fill in at this joint they used some kind of a mastic which was suppose to take care of the hills and valleys but daylight could be seen in many places. Mr. McHill pointed out that this was caused by insufficient maintenance and the correction could be made simply by turning down some bolts.

In addition to galvanized panels the Luria people had aluminum and corrugated asbestos which was a combination of cement and asbestos very similar apparently to Transite. For our purpose, Mr. McHill recommended that we use the corrugated asbestos for the roof and galvanized for the sides. The reason for this recommendation was because of the installing value of the corrugated asbestos. Even with asbestos they sometimes use installation but he did not think it would be necessary. For an installation such as this, he estimated a building cost of \$2.40 per square foot. To use corrugated asbestos in the roof and walls, which would give a maximum of installation, he estimated a building cost of \$2.50 per square foot. Because the metal would take a bump in the form of a dent and the corru-

gated asbestos would break, I believe Roger felt that we would not want to use asbestos on the sides.

These people did no financing and would want 20% with the order and the balance on sight draft.

Another feature of the Luria Building which Roger did not like was that the holes in the panels were drilled in the process of erection and these would not be as accurate as holes which were punched in at the factory such as is the custom with Butler Buildings. The Butler representative also pointed out that they punch the holes before galvanizing so that the hole edges are galvanized and will not rust. In the Luria Buildings, the hole edges would not be galvanized.

We told Mr. McHill we would send to him proposal for a plant and he would then give us a more accurate cost estimate.

We left Atlanta Thursday afternoon and went on to 3331 Birmingham. When we arrived in Birmingham, we went to the newspaper and spent considerable time Thursday afternoon and evening with Mr. Dave Wood, Circulation Manager, and Mr. Bob Hunter, Secretary-Treasurer of the Birmingham Newspapers. For obvious reasons they are very much interested in our locating in the South and they were very cooperative and kindly gentlemen. I am certain their friendship would continue and we could count on any assistance which the Birmingham papers might be able to offer after we have located down in their area. Mr. Bradley was out of town when we were there but from our conversations I gathered he, also, was much interested in our move.

We talked to Mr. Wood at length about the mailer's situation in Birmingham. Their rates are approximately \$88.00 for daywork and \$92.00 for nightwork—which is after 6 P.M. Their mailers are under International Mailers Union. I understand that at one time they were affiliated with I.T.U. but went over to the I.M.U. a few years ago. They work 37½ hours per week. Our impression from Mr. Wood was that they have a rather difficult time with the mailers and a good deal of the reason is because there is a located in Birmingham called "Shopping Guide". This magazine is printed in Birmingham and distributed monthly. Their mailers, that is the "Shopping Guide" mailers, are also under the jurisdiction of the I.M.U. and their scale is \$14.00 higher than the Birmingham Newspapers. The newspaper mailers strive to get up to the "Shop-

ping Guide" mailers. Mr. Wood gave us a copy of their current contract which expires this month.

In addition to the Mailers, they have a "Catch-all" Union which covers the janitors, paper handlers, and anyone who couldn't get in any other union. They have just come out of arbitration with this Union on a contract which I believe expired last March.

Rather than take a chance on getting tied in with the I.M.U., it would be my impression that we would be better off going down with the arrangement we now have with the Wilkes-Barre Paper Handlers and try to keep them under the jurisdiction of the International Printing Pressmen and Assistants 3332 Union. I understand the I.M.U. is also an A.F. of L. affiliate and if we become established with I.P.P. and A.U. a jurisdictional dispute would be very unlikely. If we went Open-Shop, our chances of being organized would be greater from the I.M.U. because of our proximity to the Birmingham mailers of the I.M.U.

We also talked to Mr. Hunter and Mr. Wood regarding our newsprint hauling setup. As we already know, they are hauling newsprint from Coosa Pines to their plant in Birmingham, a distance of 86 miles round trip. Their over-all cost runs 30¢ per mile. They use a 32 foot Pamdem tractor-trailer which carries 17 rolls of newsprint, weighing approximately 32,000 lbs. Rolls are carried in two tiers, nine on the bottom and eight on the top. This gives them a cost of 8¢ per hundredweight. They use one man on this truck. They pay this man \$6.50 per trip and he makes two trips in one day. This man has nothing to do with the loading or unloading. They have more than one truck and this man starts out by driving to Coosa Pines. The newsprint mill people load the truck with 17 rolls. The man drives the truck back to Birmingham. He doesn't wait for the trailer to be unloaded but gets another tractor and makes another trip to Coosa Pines. It takes the man one hour to drive to Coosa Pines and one and one-half hour to make the return trip. These men do not work eight hours per day and very often get in their two trips in six hours or less.

The Birmingham News has a subsidiary company which transports their paper and does their hauling. I believe they call this the Luxury Transportation Company. They cover the State of Alabama and part of Georgia. Mr. Wood indicated they

would be willing to haul for us but the trucks which do the delivering are small. However, Mr. Wood indicated they might be willing to use their newsprint trucks to haul paper for us and it might be their trucks could take a load from the newsprint mill to our location before returning to Birmingham and the operation would be economically beneficial to us and to the newspaper. Even at our peak, we estimate we would need only

twelve truck loads per week and it might be well to investigate this possibility further and thus eliminate the heavy expenditure for a tractor-trailer—particularly if we do not intend to do any supplement delivery. We asked Mr. Wood about the status of newspaper hauling in the State of Alabama and he advised they have the same exemption which applies on Interstate Commerce so that it is not necessary to have any State permit in order for a carrier to transport newspapers.

While at the newspaper, we met the various foremen and I am going to note here the name of Harry Wilson, the foreman of their Stereotype room, who offered any assistance they might be able to give. Incidentally, they have a wood registering machine and use it quite frequently since they are printing four-color ads in their daily paper. We asked him about the manpower situation and he advised while they do not have a shortage neither do they have any subs. I got the impression that the Stereotypers are getting their share of overtime in Birmingham.

On Friday morning, we contacted the Butler people and eventually met up with a Mr. Bingam, owner, and a Mr. Joe E. Brown, representative of the D. & B. Fabricating Company, General Contractors, 11 Southwest 18th Street, Birmingham, Alabama. These people are general contractors and do the work in this section of Alabama for the Butler people.—For the record their telephone number is Birmingham 58-1623 and Brown's home number is Birmingham 57-4013. We spent Friday morning with these people looking at various Butler buildings which they had erected. One building, occupied by a manufacturer of metal cans, particularly impressed us. This building contained 32,000 square feet of floor space and cost \$102,000, including foundation, electricity, heating, plumbing, and office annex. The heating setup would not be satisfactory for us but this gave us a good indication of the cost. This building seemed to be very

much larger than we would need. Mr. Brown is going to send us a copy of the floor plan of this building and we can then judge how much space we will need. Once we have a good idea as to the amount of space we will need, Mr. Brown would like to come to Wilkes-Barre and go over the plans and give us more accurate price estimate. For heating, they recommended individual univents operated by natural gas and located in particular areas. On this basis, we could use as many of the individual units as we needed at a particular time and we could add to the setup at any time. We saw some of these units in operation and it appeared to be just what would be suitable for our purpose. These people do not recommend air conditioning. As a matter of fact, they advise air conditioning will be effective only for an area of from 6' to 8' from the floor level and will not be helpful above that, so that anyone working on top of or in a press might not get enough benefits to make the cost worth while. As a matter of fact, all of the people from whom we inquired thought air conditioning would not be necessary and we did not see any plant or building which was air conditioned and this includes the Birmingham News and the Birmingham News Pressroom which was not air conditioned. They have various means of installing and they would recommend that we use aluminum on the roof and galvanized metal on the sides. We were given to understand that an aluminum roof would give an inside temperature of 15 to 20 degrees cooler in the Summer than the galvanized and would require no maintenance. The cost of aluminum is approximately 9% greater than galvanized. These people estimate an installing cost of 20¢ to 25¢ per square foot of area covered. Mr. Bingham advised that Butler material costs from 90¢ to \$1.00 per square foot to deliver the material on the ground. We expect to have the floor plan by Monday, January 24th, and as soon as Roger has a chance to make up cutouts of the various equipment, etc., so we can determine just what we need in the way of space, we should get in touch with Mr. Brown and have him come to Wilkes-Barre. We told him we would expect to be ready for him within two weeks and that we would advise him a few days before we would want him here. Mr. Brown is anxious to come to Wilkes-Barre to go into this thing further.

We favor the idea of someone like the D. & B. Fabricating Company handling the construction because they do general

contracting work and they would do the complete job from engineering to the completion of the building and they would be wholly responsible. Incidentally, the D. & B. Construction Company was sent to us by Mr. Cooper Green, of the Alabama Power Company, and he highly recommended these

3335 people. Apparently, they have worked together—that is Mr. Green and the D. & B. Construction Company—on other projects of this sort for new plants coming into Alabama.

These buildings—the Butler Buildings—come in widths of multiples up to 40' and then in 10' multiples up to 100'. However, to get maximum transit we were advised not to go over 50' in width and use two units—getting a total width of 100'. In length the bays are 20' by whatever height is chosen starting at 12' and increasing by two foot multiples.

Both Mr. Brown and Mr. Bingham have visited the sites in Childersburg and Sylacauga which were being offered to us. Mr. Brown advised that he had checked with the sprinkler people and they had informed him there was not enough water pressure at the Childersburg site for sprinklers and we would have to put in our own pumps to maintain adequate pressure. He said this would cost us about \$20,000. I asked Mr. Waller, of the Alabama Power Company, to verify this information and he checked with the Insurance Underwriters. The information Mr. Waller wrote to us on January 10th neither confirms nor denies this allegation. This contact was with a Mr. F. M. Pierce, of the Southeastern Underwriters Association, and he advised Mr. Pierce could not give us any definite information as to whether the water pressure and supply were sufficient for the sprinkler system at any one location in either area and Mr. Pierce suggested that the Sprinkler contracting firm will make this survey, free of charge, if they are given the installation contract. This, of course, will not do us any good. We want to have this information before we give any contracts. When Mr. Brown comes to Wilkes-Barre we can, no doubt, get more definite information from him and it will be important to keep this in mind.

So far as the foundation, etc., is concerned, Mr. Bingham made the same recommendation as the Luria people. That is, 4" concrete floor reenforced with wire mesh and the foundation should be 8" reenforced with rods.

They estimate they could erect our building in eight

3336 weeks. If we give them the necessary layout, they would put in the press pits, conduit in connection with the pits, and any other special features which might have to be built into the foundation or the building itself. This was one of the reasons why we wanted Mr. Brown to come to Wilkes-Barre.

We went Sylacauga on Friday afternoon and met the Chamber of Commerce. They presented us with maps, pictures and considerable data covering three proposed plant site locations. These three locations were on the L. & N. Railroad and apparently this is the extent of the possibilities adjacent to the railroad. Site #1 is located just 13 miles from the entrance to Coosa River Newsprint Company. This site is on ground which is slightly rising and appeared to be an ideal location from the standpoint of drainage, excessibility, etc. In order to reach this site from the Coosa River Newsprint Company, it would not be necessary to go into Sylacauga proper as this location was about one block from the Birmingham-Childersburg-Sylacauga Highway and was just this side of the city limits of Sylacauga. There were no residential houses close enough to this area so that our noise would be troublesome. There is further detail on this in The Other Sites, the booklet given to us by the Chamber of Commerce.

Site #2 was located on the opposite side of the town and was 15 miles from the Coosa River Newsprint Company. In order to reach this location it was necessary to drive through the center of the town. This site was somewhat lower than the adjoining road and because of the additional driving time necessary would not appear to be as suitable as site #1.

Site #3 was located a few hundred yards from Site #1 but it was not within the city limits. Although the mayor and the city officials agreed to give this location fire and police protection, etc., it would not seem wise to locate in an area where they were not obligated to give service because the next city regime might not be so friendly. However, they did advise that at the next session of the legislator, if we wished, they would take necessary steps to extend the city limits to include this location. This land was also low and would not seem to

3337 be quite as suitable for our purpose as Site #1.

Of the three sites offered to us in Sylacauga, we felt that Site #1 was by far the most favorable for our purpose.

The Chamber of Commerce offered to give us, free of charge,

any one of three sites. Also, they offered to put a railroad siding into our building if we thought this would be absolutely necessary. From our conversations, I got the impression they expected to pay from \$3,000 to \$4,000 to put a siding into our plant and they would stand this expense if we deem it necessary. They hold limited options on all three locations and, naturally, they would appreciate a decision from us as soon as practical. I told them we would probably come to a decision on a plant site in about thirty days.

Regarding machinists and machine shop. There is a machine shop run by a Fred L. Conn. They gave us a list of the equipment which Mr. Conn has in his shop and, I understand, he did not have any lathe big enough to handle our cylinder. However, Roger talked to Mr. Conn and got the impression from Mr. Conn that we would have no difficulty getting machinist help which would be suitable for erection work. The machinists in this town are not union and Roger thought the only difficulty we might have would be if the Birmingham union came in and objected to our men working with the non-union men who would be available in Sylacauga. Since Alabama has the "Right To Work Law", a situation such as this might not be as critical in Birmingham as it would be in Wilkes-Barre.

So far as financing is concerned, they agreed to finance a building erected to our specifications on a ten, fifteen or twenty year basis with interest at the rate of $3\frac{1}{2}\%$. They claim they can raise the necessary funds quickly and in no case would they require more than thirty days after we give them a decision.

They offer a five year exemption on city and county taxes. Also, they offer to construct any streets or roads which would be necessary for access to the plant site. A street would be necessary for Site #3 but not for Site #1. They had figures covering principle and interest on ten, fifteen and twenty year plans at the $3\frac{1}{2}\%$ rate. According to their

figures, the cost to finance for ten years would be \$9.88 per month per thousand. For fifteen years \$7.18 per month per thousand and for twenty years, \$5.79 per month per thousand.

Mr. Green and Mr. Waller, of the Alabama Power Company, apparently spent considerable time in Sylacauga going over the sites, and advising the Chamber of Commerce on the

procedure of acquiring the sites, raising the necessary funds, etc.

There can be no doubt but that we received and could expect to receive one-hundred percent cooperation from the Chamber of Commerce and the municipal government of Sylacauga. These people were most solicitous and did everything possible to make our stay pleasant and to give us all the information we requested. They are a most civic minded group and apparently are well aware of the advantages they would receive from a weekly payroll such as we would distribute. This was evident because all of our dealings were with people who would benefit more or less directly by a new industry and particularly by one which would not be competitive to the present industries which are in business in the town.

In order to maintain their prestige with their own business people, the Chamber of Commerce in Sylacauga asked that when we do arrive at a decision we first advise the local Chamber of Commerce either in Childersburg or in Sylacauga so that they can make the announcement rather than get the information from the Birmingham Chamber of Commerce or the Birmingham newspapers. Because of the tremendous amount of effort which they have put forth compiling information for us, we agreed that whatever our decision might be we would first contact Mr. Nealeans, of the Sylacauga Chamber of Commerce.

We returned to Birmingham Friday night because we hoped to see Mr. Cooper Green Saturday morning and we made arrangements to meet again with the Sylacauga Chamber of Commerce on Saturday afternoon.

Saturday morning, we called Mr. Green but he was out of town and his assistant, Mr. J. C. Waller, was waiting for us. He returned with us to Sylacauga and spent all day Saturday and Saturday night with us.

We spent Saturday looking over the city and its facilities, checking machine shops, housing, living conditions, etc.

Sylacauga has a paid Fire Department consisting of two companies. They had three trucks which appeared to be very new and in good condition and a fourth truck which was old. When I visited the Engine House there were about six men on duty. Because Childersburg does not have a paid Fire Company but only a paid driver at this time, it would be well to

check with Mr. Green to get all of the information we can on insurance rates and coverage costs for us. The Sylacauga people have given us this information in a general way but we can probably find out exactly what the difference amounts to. Of course, the difference in insurance rates is not nearly so important to us as the actual difference in the risk involved. We are more interested in the actual protection than the insurance coverage and apparently there is no comparison between Childersburg and Sylacauga in this respect at this particular time.

We spent Saturday and Sunday in Sylacauga and devoted considerable time to looking over the town and its facilities, such as hospitals, recreation, churches, schools, etc. From a living standpoint there is little to compare between Childersburg and Sylacauga. However, the highway from Childersburg to Sylacauga is excellent and would not be much of a hardship for an employee to drive the twelve miles distance between the two towns, if we should locate the plant in Childersburg and the employees wish to live in Sylacauga. Because of the vast difference in the living conditions, no doubt the majority of the employees would want to live in Sylacauga. It is very likely that housing is going to be one of our big problems. We pretty well covered both towns and found very, very few houses for sale and none for rent. At least at this particular time there were no houses for rent and only a few apartments in Sylacauga. There is considerable building going on in both towns. There are very few used houses for sale and it would appear that anyone going into the area to live would almost be compelled to build a house before moving. Houses, now being built, cost from \$9,500 on up and a house at this price seems to be a minimum. We saw very few houses costing less than \$13,000 to build and many of them in the \$16,000 to \$18,000 class.

3340 Practically all of the houses are one story affairs and do not have cellars, attics or garages. They have either floor furnaces or piped hot air which are heated by natural gas. There seems to be one major building contractor in Sylacauga—that is for residential buildings,—and at present he has 27 houses under construction and 15 sold but not started. We spent considerable time with him on Sunday—his name was Bill Whetstone. He told me he ordinarily finishes a house in four months but could step this up if necessary. Their building costs are based roughly on an average of \$8.00 to \$10.00

per square foot of floor space for living area and \$2.50 to \$4.00 per square foot for storage area—such as car port, etc. The \$8.00 per square foot cost is the minimum to meet F.H.A. specifications.

There were two apartment units in Sylacauga and both had some vacancies. The rents ranged from \$42.50 for one bedroom to \$57.00 for three bedrooms. Apparently, apartment dwelling is not very popular and very likely this is because of the heat. Taxes by our standings are very reasonable. They told us that taxes on a \$15,000 house runs not more than \$36.00 per year.

Sylacauga houses can be furnished on the F.H.A. or the V.A. plan. To purchase a house which sells for \$13,300, a veteran would need a down payment of \$665 and an F.H.A. borrower would need a down payment of \$1,500. Monthly payments, on a twenty-five year plan, would then run about \$75.00 covering principle, interest, taxes and insurance.

On Monday morning, Mr. Waller, of the Power Company, met us in Sylacauga and we called on Mr. Watt and Mr. Wakeman at the newsprint mill. While at the Birmingham paper, Tom suggested they might be able to get the Coosa River newsprint without wrapper and Mr. Turner, who had previously complained about the cost of Canadian wrapper, indicated they could probably try some Coosa River newsprint without a wrapper. Tom then suggested to Mr. Watt the possibility of us getting paper without a wrapper and Mr. Watt thought this could be arranged since they do not manufacture their wrapper and must purchase it from the outside.

With Messrs. Wakeman, Watt, Bachelder and Cleckler, we visited the two sites in Childersburg. Both sites seemed to be very suitable from a building standpoint. Mr. Cleckler and Mr. Bachelder advised the town's people were prepared to do anything in order to get us into Childersburg. The one site—the one closest to the Mill—did not have sewage and it would be necessary to put in a septic tank. The other site—the one closest to the town—could have city sewage, water and natural gas. Mr. Cleckler told us that we could have as much property as we wanted of the first site up to perhaps ten acres, free of charge. This offer was made by the owner of this land or someone speaking for the owner. The Second Site is the four acre plot which was offered to us origi-

nally at \$900.00 per acre. Mr. Cleckler advised that they would arrange to raise the money to finance the plant.

Mr. Wakeman was insistant that we go to Talladega and look at a building which was being offered for sale by a George Jones Realty Company. It seems Mr. Jones is an influence in county politics and he contacted Mr. Wakeman about the possibility of our plant being located in Talladega and he particularly wanted us to look at a building which had been formerly occupied by the Palm Beach Clothing Company. This building contained 75,000 square feet of floor space and obviously would not be suitable for us but in order to appease Mr. Wakeman—who stressed the importance of Talladega in the county political setup and more particularly Mr. Jones—we did go to Talladega Monday afternoon with Mr. Waller of the Power Company. We visited Mr. Jones and the plant mentioned above. This plant was for sale at \$2.00 per square foot but would not have been for us. Mr. Jones showed us other buildings but none which were close to filling our needs.

While at this Palm Beach plant, we were advised by the people who ran this operation they had several hundred lockers for sale and we might keep this in mind for some future time.

We returned to the Newsprint Mill on Monday afternoon and with Mr. Waller and Mr. Watt went to Birmingham to meet Mr. Green. We spent Monday evening with these three men. We asked Mr. Waller and Mr. Green to get us informa-

tion about the water pressure in the two towns. Mr. Green wanted to know if we were satisfied with the sites, financial arrangements, etc. in Sylacauga. He was familiar with the sites and arrangements. He told us he visited the business in Sylacauga in order to get their attitude toward the possibility of our establishing a plant and he recommended they write letters of greeting which the Sylacauga Chamber of Commerce have had prepared for us. I told Mr. Green you were very appreciative of his efforts in our behalf and that you would be grateful if he would give us an off-the-record opinion as to where he thought we ought to locate. Mr. Green did not want to be quoted but he thought if we could handle the newsprint hauling angle without a prohibitive cost, we would be better off locating in Sylacauga than we would in Childersburg. He said he would be influenced by the facilities of the town.

from a business standpoint and also from a living standpoint for the employees. He felt that the people of Childersburg—particularly Cleckler—could not raise the necessary funds to finance the building on their own and that they would have to go out of town in order to finance. He thought that if they did have to go out of town that they would not be able to finance for us at the rate of interest which the Sylacauga people were going to charge—that is $3\frac{1}{2}\%$. As a matter of fact, he said we would probably have to pay $4\frac{1}{2}\%$ or 5% if we do go into Childersburg.

Since we returned from Alabama, we have received a letter from the Sylacauga Chamber of Commerce, dated January 22nd, in which they correct some insurance information they gave to us originally and which is contained in the book of information which I have turned over to you. I am having copies made of this letter and it would probably be well to put one copy in the book so that there will be no mixup later on.

We have also received from the Alabama Power Company a copy of a "Tentative Agreement" which would cover the initial stages of the negotiations with the people who are going to finance the building, whoever they might be. This "Tentative Agreement" is something which would come before
3343 a formal lease. I thought they were also going to send us a copy of a typical lease covering similar circumstances but they have not done this. It might be well to write to Mr. Green and request something along this line at least so that we will have an idea as to the normal procedure.

JOE CLINTON.

MM

3344 [———for ident., P-112 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

APRIL 5, 1955.

Memo To: Mr. Gorman, (Seven Extras).

Copies: John Booth, Bessie, Vince, Gerry, Don and Ray, Tom Brennan.

In lengthy memo dated March 22nd concerning South Administration General, you asked that I work on exactly what we will be able to print in the South to determine how much news-print we can use in 1956.

Attached is one set of schedules showing the different 8-page runs which we might print in the South next year listed according to the group to which they belong, including a group of special makeready runs which could be taken singly. I have figured that we would start out with the special makeready 8-page standard and add enough special makeready 8-page standards until certain we are running right before going into any group printings.

The second schedule shows the press and newsprint requirements for the year 1956. This schedule shows what we will run with 410, what we will run after we add 717 and what we will run after we add 505. This schedule also shows the weekly newsprint requirements using one, two and then three presses. You will note I have figured we will use one press for January and February, two presses for March and April and three presses from May through December. I realize we plan on having the presses in operation before the dates I show. However, we will have to start out slowly and probably will not work the presses to capacity for some time. At any rate, I thought it safer to use these figures but they can be adjusted. You will note the Total Yearly Newsprint Requirements is 5,200 tons. As against the contract calls for 2,500 tons for 1956 but Mr. Watt, in his letter of February 24th, advised they would be able to give us newsprint before mid-1956 and therefore, would be able to give us more 2,500 tons in that year. We will have to decide how far we want to go towards 5,200 tons and then see what we can get from the mill. The jump from 2,500 tons in 1956 to 8,000 tons in 1957 is not good in that we need only two single-width presses in the one year but we need three single-width and a double-width the following year. What we can get from

3345 the Mill in 1956 is most important at this time.

JOE CLINTON

MM

[See pp. 1851-1853 for attachment]

3340 [— for ident., P 113 in exhibit, H. T. Noel, Official Reporter, U.S. District Court.]

MAY 15, 1955.

Mr. R. O. STRONNBERG,
The Hearst Corporation,
360 Eighth Avenue,
New York, New York.

DEAR BOB: Thanks very much for your letter of May 11th about the paper situation. As you can readily understand, it is difficult for us to state absolutely that we will have a press ready at a certain time next year but we are counting on getting one press ready about March, another in May and a third in July. Watt will have no paper until July 1st and then he will have 2,500 tons for us after that for the remainder of 1956. If we run three presses through the second half of 1956, we will use up to 150 tons per week or close to 4,000 tons in the second half. We are somewhat concerned about the period from March to July and it has occurred to us, and I have broached the idea to Mr. Watt, that if we have a press or two ready between April and July, we might be able to switch tonnage, for instance, you might be able to give some International Paper to St. Louis or Kansas City instead of to us and Watt would give us what we had intended for St. Louis or Kansas City. We are fairly certain that we will have one press ready in March and three presses by July 1st, and we are fairly certain that we would need about 4,000 tons between July 1st and January 1st, 1957 but, as I said before, we cannot be absolutely certain about when the presses will be ready.

Best regards,

Sincerely yours,

INTERNATIONAL COLOR PRINTING CO.,
JOSEPH J. GORMAN.

JJ:MM

Copy: Frank J. Nicht, King Features Syndicate; John Booth, Joe Clinton, Bessie, Tom Brennan, Vince, Newsprint File, Southern File, Hearst Corporation.

33500 [——— for ident., P 114 in evid., H. T. Noel, Official
Reporter, U.S. District Court.]

Copies: John Booth, Joe Clinton, Tom Brennan, Vince
Hessle.

JUNE 3, 1933

MR. JACK NEALEAND, *Secretary,*
Chamber of Commerce,
Sylvauga, Alabama.

DEAR JACK: I suppose it seems that we are somewhat dilatory in our move to give you a statement regarding location in Sylvauga but actually there are many things involved which are difficult to fully explain to persons not familiar with the newspaper readyprint situation. Confidentially, we are going to Sylvauga. We may not be able to give you a full statement for the public by June 7th for the reason that it is necessary for King Features Syndicate to clear up certain contractual matters with newspapers beforehand. I have every hope that I will be able to contact you definitely by June 7th but if not I wish to confirm what I said in previous letter that you should purchase the land. Also, as per our telegram of this date, please proceed with the grading in accordance with our understanding that the road will be lowered so that at no point will the roadway be more than from 3 1/2 to 4 feet higher than the industrial site.

I wish to impress upon you that this is a very responsible company and King Features Syndicate is fully responsible as just between the Sylvauga Chamber of Commerce and International Color Printing Company I can confidentially state that we are going to locate in Sylvauga and if I cannot give you a full statement by June 7th, it is a delay which simply cannot be avoided.

Best regards.

Sincerely yours,

INTERNATIONAL COLOR PRINTING CO.
JOSEPH J. GORMAN

JJG:MM

3551. [—] for ident., P-115 in evid., H. T. Noel,
 Official Reporter, U.S. District Court.]

INTERNATIONAL COLOR PRINTING CO.,

Newspaper Comic and Magazine Supplements,

208 George Avenue, Wilkes-Barre, Pa.

Phone, Wilkes-Barre VA 4-7871, September 27, 1955

10 Color Presses, Total Capacity 40 Million Four Page Sections
 Per Week, Branch Plant, 105 South Street, Peoria, Ill.

Phone, Peoria 4-6013

Mr. FRANK NICHT,

King Features Syndicate,

236 East 40th Street,

New York 17, New York

DEAR FRANK: Regarding the announcement made in Sylva-
 cuga by me. It was primarily intended for Sylva-cuga consump-
 tion and I made it clear at that time that we had chosen
 Sylva-cuga as the site of the Southern plant and would build a
 plant there "provided final financial and building plans can be
 eventually agreed upon."

In my talk to the people Sylva-cuga I emphasized fact that
 they would have to sell bonds in the amount which would give
 us a satisfactory building and they would also have to give us
 a lease which would be satisfactory. We are committed to
 Sylva-cuga provided our conditions are met, but before we agree
 to sign lease we must know that people of Sylva-cuga will give
 us the kind of building we want, and they cannot do anything
 about this until after our building plans have been completed
 and bids received. Actually I don't think there should be too
 great a hurry about publicizing generally our Southern plans.
 I mean that we should not put too much publicity in Editor &
 Publisher, newspapers and other publications. Certainly there
 seems no reason why you should not contact all of the news-
 papers involved and notify them that you are the selling agent
 for International Color Printing Company and that when a
 Southern plant is finally established, all sales for work produced
 by International Color Printing Company will be in the hands
 of King Features Syndicate.

I just want you to know that no final papers have been signed for a Sylacauga plant and none can be signed until after building plans have been completed and lease terms agreed upon.

Best regards.

Sincerely yours,

J. J. Gorman.
JOSEPH J. GORMAN.

JJG/hlm

3352 [——— for ident., P-118 in evid., H. T. Noel,
Official Reporter, U.S. District Court.]

JUNE 26, 1956.

Mr. CECIL WALDROP, *Chairman,*
Industrial Development Board of the City of Sylacauga, Inc.
c/o Chamber of Commerce,
Sylacauga, Alabama.

DEAR MR. WALDROP: At the last meeting of negotiations which were held in Wilkes-Barre with your representative Mayor Ed J. Howard and Jack Nealeans and subsequent meetings held in Sylacauga, we were offered as a gift from the Citizens of Sylacauga a clear title deed to a 3.64 acre plot of ground located at 908-934 West Fort William as now graded with agreed upon power, gas, water and sewage facilities available upon this property.

In consideration for the gift of land we agree to proceed within 90 days, or as soon thereafter as possible, to put up a plant building of approximately 45,000 square feet and generally the same as the D & B drawings and specifications of which you have copies at our own expense and by means of our own financing. We will use said site and building to operate a color printing establishment which we expect will give steady employment to at least 100 people.

We trust that this agreement will meet with the requirements of your Board and your Citizens and that you will have the deed made out and mailed to us as soon as possible.

Sincerely yours,

INTERNATIONAL COLOR PRINTING Co.,
JOSEPH J. GORMAN, *President.*

JJG:MM

CC—JW B—JC—Tom B

3353 [— for ident., P-118A in evid., H. T. Noel, Official Reporter, U.S. District Court.]

JUNE 26, 1956.

Mr. CECIL WALDROP, *Chairman,*
Industrial Development Board of the City of Sylacauga, Inc.,
c/o Chamber of Commerce,
Sylacauga, Alabama.

DEAR MR. WALDROP: Supplementing our letter of June 26th, concerning the plot of ground situated at 908-934 West Fort William which you are giving to us and upon which we propose to build our printing plant, be advised that we wish title to be made in the name of our Parent Company. The Greater Buffalo Press, Inc., Buffalo, N.Y. The Greater Buffalo Press will own the land and the building and will lease the same to its wholly owned subsidiary. The International Color Printing Company, for the operation of the printing business which will be in the name of the International Color Printing Company.

Sincerely yours,

INTERNATIONAL COLOR PRINTING Co.,
 JOSEPH J. GORMAN, *President.*

JJG:MM

CC—JW B—JC Tom B

JUNE 18, 1956.

Memo to Mr. Gorman (3 extras).

CC:JW B—Tom B—Vince—Bessie.

Following is a copy of letter agreed upon between Nealeans and Howard in Sylacauga, Tuesday, June 12th. It is my understanding that the purpose of this letter is that they wish to use it as the basis for soliciting the additional \$16,000 or \$18,000. Which they require for the additional land and grading. In order not to complicate the thing on a local level we decided it would be better to write a supplementary letter advising that title will be held and building owned by Greater Buffalo Press and that deed should be made out accordingly. This is the reason for the second letter. The first letter would be about as follows:

"At the last meeting of negotiations which were held in Wilkes-Barre with your representative Mayor Ed J. Howard and Jack Nealeans and subsequent meetings held in Sylacauga, we were offered as a gift from the Citizens of Sylacauga a clear title deed to a 3.64 Acre Plot of ground located at 908-934 West

Fort William as now graded with agreed upon power, gas, water and sewage facilities available upon this property."

"In consideration for the gift of land we agree to proceed within 90 days, or as soon thereafter as possible, to put up a plant building of approximately 45,000 square feet and generally the same as the D. & B. drawings and specifications of which you have copies at our own expense and by means of our own financing. We will use said site and building to operate a color printing establishment which we expect will give steady employment to at least or approximately 100 people."

"We trust that this agreement will meet with the requirements of your Board and your Citizens and that you will have the deed made out and mailed to us as soon as possible."

Following is copy of what would be the supplementary letter:

"Supplementing our letter of ——— concerning the plot of ground situate at 908-934 West Fort William which you are giving to us and upon which we propose to build our printing plant, be advised that we wish title to be made in the name of our Parent Company, The Greater Buffalo Press, Inc., Buffalo, N.Y. The Greater Buffalo Press will own the land and the building and will lease the same to its wholly owned subsidiary, The International Color Printing Company, for the operation of the printing business which will be in the name of the International Color Printing Company.

Sincerely yours,

3355 (#2 Memo to Mr. Gorman.) (JUNE 18, 1956.)

The foregoing are suggested forms and I think can be altered as necessary.

I also thought of the possibility of International Color Printing Company taking title to the land and at some later date deeding it over to Greater Buffalo Press.

JOSEPH CLINTON.

MDL.

3356 [——— for ident., P-119 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

INTERNATIONAL COLOR PRINTING Co.,
Newspaper Comic and Magazine Supplements,
 268 George Avenue, Wilkes-Barre, Pa.,
 Phone, Wilkes-Barre VA 4-7871, July 2, 1957.

19 Color Presses, Total Capacity 40 Million, Four-Page Sections
 Per Week, Branch Plant, 107 South Street, Peoria, Ill.,
 Phone, Peoria 4-3013

Mr. WALTER KOESSLER,
 Greater Buffalo Press, Inc.,
 302 Grote St.,
 Buffalo, N.Y.

DEAR WALTER: This is to bring you up-to-date on Press 2022 for the South. As you know it has been erected for a number of months past. One folder is completed including split delivery. The other folder is completed with the exception of a new collecting cylinder. Reels have been rebuilt, erected and ready for attachment with the exception of electrical work. Impression cylinders have been turned down and altered for 5 plate wide operation. Nothing has been done on the plate cylinders although we have received from you the rings and clips and expect to pay for them this month.

We have been working on the lights and other minor items and any day now we will start working on the plate cylinders. We could probably, by pushing, get this press ready in 3 or 4 months. This press carried with it a 100 h.p. motor and controllers practically new.

One of these days we will review our stereotype machinery and list what we have on hand in Wilkes-Barre and you can figure on the additional material which might be needed from Buffalo.

Very truly yours,

Joe,
 JOSEPH J. GORMAN.

JJG/rb
 CC: K.K. W.H.

3357 [——— for ident., P-120 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

CC: Gerry, John Booth, Joe Clinton, Tom, Bessie, 4 ex.

AUGUST 11, 1954.

Mr. FRANK NICHT,
King Features Syndicate,
235 E. 45th St.,
New York 17, New York

DEAR FRANK: I have been studying your letter of July 26th regarding speedy work on plans for Southern plant. You said, "I am anxious to be in a position to go ahead with our part of the program which, of course, involves client relations and sales. I suppose the first thing necessary is to feel sure that we have a deal with some mill. I presume that if you decide it would be best to have the plant next to or nearby a mill that the mill wouldn't make an arrangement with any other supplement printer. Like you I would like to proceed with speed, but great as my desire along this line may be I must also proceed with caution. Setting up an operation like this cannot be done over night. We have to decide what type presses are needed, what arrangements can be made with unions, which transportation companies and last but not least what arrangements can be made with mill."

Now let us take each item separately. First and most important we need to be certain of the mill contract, that is, the source of supply. We know that as of May 26th the mill people was just as anxious to sell to us as we were to buy. I haven't noticed any change in attitude since. I had hoped to get to Birmingham this week, just for general conversation with Mr. Watt about what terms he has in mind, but when I called to make the date he had a previous engagement in Florida. I suppose that Mr. Watt may be somewhat surprised when he learns that International Color Printing Company and King Features are not one and the same, and then again he may not be surprised. Certainly he and the other directors will want to know that if they make a contract with us it will be practically the same as making it with King. Perhaps we will get some line on the mill thinking when you and I talk with Mr. Wakeman in New York about August 18th.

Regarding labor. It is now common knowledge that we are thinking about the South and I am meeting Tuesday morning

with Wilkes Barre unions regarding possible transfer of work. The low men on the seniority list are anxious to know something about our plans so that they can make plans of their own. I have been thinking of seeing International officers and probably will do that because I don't believe we are in position to attempt an open shop, at least so close to Birmingham. One might start with an open shop but it doesn't last very long that way. I have no doubt that already members of the Wilkes Barre unions have contacted their International officers and probably have already contacted the people in Birmingham.

3358 Regarding press equipment—I am sure when we were in meeting up town I told you we planned that first of all we would rebuild two four cylinder width presses which we obtained from Baltimore. This work will probably take about a years time. We have a double width press running in Wilkes-Barre which could be moved to Birmingham after the two four cylinder presses are in operation and then we have two more single width presses which could be moved. This sort of thing cannot be done without a great deal of planning. Certainly the job could not be completed within a period of less than two or three years. We have to determine exactly what equipment we are going to use so that we will be able to tell Coosa River people what kind of space we want and what kind of building will be required. The kind of presses we use depends on the kind of work available and, as you know, our Southern work consists of mostly small runs with many plate changes.

I would like to get all of this planning behind me and therefore I am going to proceed just as rapidly as possible.

Regarding flexibility—When we speak about flexibility for 10's and 14's we have in mind two things—flexibility of equipment and also flexibility of union contracts. In Peoria we do print 12's and we do print some 10's but we cannot print 14's. In Wilkes-Barre we are now printing 10's, 12's, 14's and 20's so it is not a case so much of flexibility of equipment as flexibility of contract. Also, you must keep this in mind and you must believe me, it is most important that we be able to print 4 page standards, 8 page tabloids, 8 page standards, etc., and also be prepared to make large number of plate changes. Buffalo may print one or two 8 page standards. I don't think either Buffalo or Dunkirk is printing any at this time. They are not printing any 4 page standards and the only 8 page tabloids they handle

are those which fit together with a few plate changes. Therefore, we apparently have flexibility for certain things that Buffalo does not have, but in the long run there is no doubt that Buffalo has greater flexibility of contract and probably greater flexibility otherwise. We are doing the best we can with what we have to work with and with the kind of profit that we are able to make. We are keeping in mind these facts: you are anxious to get started as soon as possible for psychological reasons as well as for reasons of safety. You want to get the greatest flexibility possible. We want to do both things and we also want to work out a contract which will put us in better shape to do these things than we have been in the past. Please be sure that I am giving every waking moment to development of plans for speedy operation in the South.

Best regards.

Sincerely yours,

JOSEPH J. GORMAN

JJG:njr

3350 [——— for Ident., P-121 in Evid., H. T. Noel, Official Reporter, U.S. District Court.]

November 7, 1955

Memo to: JOHN BOOTH

cc: JOE CLINTON, TOM BRENNAN, BESSIE, NEWSPRINT GENERAL—INVENTORY, NEWSPRINT GENERAL—PRICES

Have just heard from Bob Sternberger and he said that there will probably be an increase in Murray Bay price but he doesn't know how much or when. Regarding the letter which I wrote to him the other day he said he would have to give my questions some more thought. Regarding Coosa River contract they have suggested that we increase the period for another four years that is from 1955 to 1969. I have agreed to that. Hearst Enterprises will prepare a contract to sell Coosa River Newsprint to us under the same terms as now exist in contract between Coosa River and Hearst Enterprises.

JOSEPH J. GORMAN.

hlm

cc: Miss Elswit file, F. J. Nicht file, South file, Hearst Enterprises file.

3360 [——— for ident., P-122 in evid., H. T. Noel, Official Reporter, U.S. District Court]

INTERNATIONAL COLOR PRINTING CO.,
 NEWSPAPER COMIC AND MAGAZINE SUPPLEMENTS,
 Phone, Wilkes-Barre VA 4-7871,
 268 George Avenue, Wilkes-Barre, Pa., April 11, 1955.

19 Color Presses. Total Capacity 40 Million Four-Page Sections Per Week. Branch Plant, 107 South Street, Peoria, Ill., Phone, Peoria 4-3013.

MR. FRANK NICHT.
 King Features Syndicate,
 235 East 45th Street,
 New York 17, New York.

Dear Frank: Since you are going to meet with Mr. Watt next week it has occurred to me that it would be a good idea for you to have some up-to-date information on probable newsprint requirements in 1956 and 1957. I believe your contract calls for approximately 2,500 tons in the year 1956 and then 8,000 tons in 1957. I am sending you a schedule marked "A" showing the different 8-page runs which we might print in the South next year, listed according to the group to which they belong, including a group of special makeready runs which could be taken singly. We estimate that we could start out with the special makeready 8-page standards and add enough special makeready 8-page standards until certain we are running right before going into what we might call the odd size runs such as 12 pages. There will be no 14-page printings in 1956. Schedule "B" shows the larger runs, which we would take on after we get going on the smaller ones. Schedule "B" also shows complete requirements for 1956, these requirements being based on the presses which we expect to have ready in the year 1956. You will note that the total yearly newspaper requirements are 5,266 tons as against the contract which calls for 2,500 tons but Mr. Watt, in his letter of February 24th, advised they would be able to give us newsprint before mid 1956, and therefore would be able to give us more than the 2,500 tons called for in that year. We will have to decide how far we want to go towards 5,266 tons and then see what additional we can get from the mill. In order to print 8,000 tons in 1957, it is necessary that we have installed in that year presses over and above those which we anticipate completing before the end of 1956.

Here is a brief review of what we are doing along mechanical lines right now. As you are fully aware we have two plants in Wilkes-Barre which we call the Parsons and the Sheldon plants. The Parsons was the original plant. It now contains five single-width presses. In our Sheldon plant we have five double-width presses and one single-width press.

We are planning to move from the Parsons plant to the South three single-width presses. On these three single-width presses we now print quite a large number of 12-page standard size runs. Before they can be moved from the Parsons plant it is necessary that we increase our capacity for 12-page runs at the Sheldon. Therefore we are now installing at the Sheldon an additional single-width press which will be run in connection with one of our double-width presses. We anticipate this press will be ready about June 1st. After we increase our 12-page capacity at the Sheldon—about June 1st, we will start moving our stereotype equipment from the Parsons plant to the Sheldon plant. We now have stereotype equipment in both plants but not enough and it is necessary that we combine at the Sheldon in order to get full capacity. We anticipate the stereotype job will be finished about July 1st and then we will start moving two single-width presses from Parsons to the Sheldon. This should be done by about September 15th. After we have completed movement of the two single-width Hoe presses to the Sheldon we will then be in a position to start moving the Goss presses to the South, provided building is ready at that time. As you already know we have long ago fully considered the sites in the Coosa River area, we have made arrangements with the Sylacauga Chamber of Commerce, we have plans drawn up for building—about 30,000 square feet, as against a much larger building which Greater Effalo is planning to erect at Lufkin, but we cannot proceed with purchase of ground in Sylacauga nor with the letting of contract for building there until we have concluded arrangements with you for the signing of a long term contract which will continue dividends to the owners as well as guarantee amortization of cost of new plant within a reasonable period. As you can well understand no bank is interested in advancing money except on the basis of a sure return of same.

The purpose of this letter is not so much to discuss contract as to keep you advised as to what progress we are making. Will

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write further, probably Tuesday or Wednesday, about other features which I do not have time to discuss at this writing.

Best regards.

Sincerely yours,

J. J. Gorman

JOSEPH J. GORMAN.

JJG/HLM

Enc.

3362 [—] for ident., P-123 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

APRIL 22, 1955.

MR. JACK NEALEANS, *Secretary,*
Chamber of Commerce,
Sylacauga, Alabama,

Dear Jack: I am writing this following our telephone conversation of this morning when I told you that we had definitely selected Sylacauga as the location for our Southern printing plant and that you should go ahead with the purchase of Site No. 1. I told you that we wished to keep the matter confidential until such time as we can clear statement with King Features Syndicate and you advised that you might find it necessary, in view of this fact, to get an extension of the option for another two weeks or thirty days. I wish to emphasize, however, that we do not desire to take a chance on losing the site. In other words, we want the matter held as confidentially as possible until such time as we can clear through King Features but this is definitely your authority to go ahead on our behalf with the purchase of the site we selected.

Best regards.

Sincerely yours,

INTERNATIONAL COLOR PRINTING Co.
JOSEPH J. GORMAN.

JJG:MM

3368 [——— P-126 for ident., P-126 in evid., H. T. Noel,
Official Reporter, U.S. District Court.]

**CERTIFICATE OF INCORPORATION OF DIXIE COLOR
PRINTING CORPORATION**

To the HONORABLE JUDGE OF PROBATE, TALLADEGA COUNTY,
ALABAMA:

The undersigned, Joseph J. Gorman, John Walter Koessler, Kenneth L. Koessler, William J. Hammond, and Joseph T. Clinton file this Certificate of Incorporation for the purpose of printing, binding, publishing, circulating, distributing, buying, selling, and dealing in books, pamphlets, circulars, posters, newspapers, magazines, literature, pictures, tickets, cards, advertisements, letter and bill heads, envelopes, legal, commercial and financial forms and bulletins of every kind and character, and to that end do hereby make and subscribe our names to this Certificate.

ARTICLE I

Name

The name of the corporation shall be
DIXIE COLOR PRINTING CORPORATION

ARTICLE II

Objects

The objects for which the corporation is formed are:

(a) To print, bind, publish, circulate, distribute, buy, sell and deal in books, pamphlets, circulars, posters, newspapers, magazines, literature, pictures, tickets, cards, advertisements, letter and bill heads, envelopes, legal, commercial and financial forms and bulletins of every kind.

(b) To acquire by purchase or otherwise turn to account, license the use of, assign and deal with copyrights and intellectual property of every kind.

(c) To carry on a general printing, engraving, lithographing, electrotyping and publishing business in all the branches thereof.

(d) To manufacture, buy and sell, and generally trade in, machinery, equipment, devices and supplies used or usable by printers and lithographers.

(e) To acquire all real property and equipment necessary or usable in the conduct of such business.

(f) The corporation desires to do business in and all the Counties and municipalities in the State of Alabama and any other States or foreign countries where it might quality to do business.

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ARTICLE III

Principal Office

The location of its principal office in the State of Alabama shall be Sylacauga, Alabama.

ARTICLE IV

Capital Stock

The amount of the total authorized capital stock shall be \$100,000.00 divided into 100,000 shares having a par value of \$1.00 each. The amount of capital stock with which the corporation will begin business shall be \$50,000.00.

ARTICLE V

Agent

The name and post office address of the agent authorized by the incorporators to receive subscriptions to the capital stock is Joseph T. Clinton, Wilkes-Barre, Pennsylvania.

ARTICLE VI

Incorporators and Officers

(a) The names and post office addresses of the incorporators and the number of shares subscribed for by each are as follows:

	<i>Shares</i>
Joseph J. Gorman, Wilkes-Barre, Pa.....	10,000
John Walter Koessler, Buffalo, New York.....	10,000
Kenneth L. Koessler, Buffalo, New York.....	10,000
William J. Hammond, Buffalo, New York.....	10,000
Joseph T. Clinton, Wilkes-Barre, Pa.....	10,000

(b) The names and post office addresses of the officers chosen for the first year are as follows:

Joseph J. Gorman, Wilkes-Barre, Pa., President
 John Walter Koessler, Buffalo, New York, Vice-President
 Kenneth L. Koessler, Buffalo, New York, Secretary
 Joseph T. Clinton, Wilkes-Barre, Pa., Asst. Secretary
 William J. Hammond, Buffalo, New York, Treasurer

- 3370 (c) The names and post office addresses of the Board of Directors chosen for the first year are as follows:

Joseph J. Gorman, Wilkes-Barre, Pa.
 John Walter Koessler, Buffalo, New York
 Kenneth L. Koessler, Buffalo, New York
 William J. Hammond, Buffalo, New York
 Joseph T. Clinton, Wilkes-Barre, Pa.

ARTICLE VII

Duration

The duration of the corporation shall be perpetual.

ARTICLE VIII

Powers

The corporation shall possess all the powers necessary to conduct the business or businesses and carry out the objects herein expressed and all those expressly conferred upon corporations by and enumerated in the Code of Alabama, Title 10 Section 70 through 93, both inclusive, together with all other powers bestowed upon such corporations under any of the laws of Alabama as well as those necessarily implied, and together with the following and additional powers:

(a) To lend money and take security therefor, or to borrow money and give security therefor on any or all the property of the corporation owned or leased by it;

(b) To engage in business as natural persons may not inconsistent with the provisions of law pertaining to the organization and regulation of corporations in the State of Alabama.

ARTICLE IX

The dates on which the stockholders' annual meeting shall be held, the number of Directors and terms of office; the terms of office of the Officers and the powers and duties of the Officers shall be fixed by the By-Laws of the corporation. Other Officers than those named herein may be created by the By-Laws and filled by the Board of Directors. The corporation shall have power to make By-Laws for the regulation and government of the corporation, its agents, servants and officers and for all other purposes not inconsistent with the Constitution and laws of the State of Alabama.

3371 IN WITNESS WHEREOF, the undersigned incorporators have subscribed their names to this Certificate of Incorporation on this the 18th day of April, 1957.

JOSEPH J. GORMAN.

J. W. KOESSLER.

KENNETH L. KOESSLER.

WILLIAM J. HAMMOND.

JOSEPH T. CLINTON.

3373 [——— for ident., P-128 in evid., H. T. Noel, 06
Reporter, U.S. District Court.]

*19 Color Presses. Total Capacity 40 Million Four-Page Sections
Per Week.*

INTERNATIONAL COLOR PRINTING CO.,
NEWSPAPER COMIC AND MAGAZINE SUPPLEMENTS,
Phone, Wilkes-Barre VA 4-7871,
208 George Avenue, Wilkes-Barre, Pa., February 5, 1960

Letter OK to File
Mr. J. W. KOESSLER,
Greater Buffalo Press,
302 Grote Street,
Buffalo 7, New York

DEAR WALTER: I am writing this now after another meeting with Joe Clinton on the subject of the South.

We expect to complete our press 2302 between February 1 and March 1st. We would then be able to go ahead with 20. We expect to have 2022 completed sometime about the first of May, and in the meantime we can start taking the press down for shipment, and in any event we would have the complete press in Alabama probably ready for erection about middle of May.

Our press and motor pits in Alabama were built for 100 horsepower motor, having in mind that we are running very satisfactorily 12 cylinders with 100 horsepower. Also we have quite a bit of margin for extra capacity when running the 100 horsepower. However, it was decided in Buffalo that we ought to increase the capacity from 100 horsepower to 200 horsepower. It is planned to make this increase by adding a new 100 horsepower drive and with two motors we would have the assurance of having at least one of the two operating instead of getting one 200 horsepower motor. The present motor pit is not large enough to take the additional equipment, and the conduit running from the balcony to the present pit is not large enough to take care of an additional motor. Therefore, we will have to enlarge the pit and make provisions for running additional conduit from the balcony to the motor.

I think all of this work should be done before we begin erecting the press. Since we are just now getting into the proposition of another motor we have no idea about delivery, but we can get all the information necessary to enlarge the pit, etc. Joe thinks that so that this work should not hold up the erection we should get started as soon as possible. We could have Roger redraw the motor pit. Our electrician, Fred Brown, can sketch out the conduit. We could engage a man in Sylacauga to do the pit work, and we could do likewise with a Sylacauga man for the electrical work. We have had quite a bit of experience with the electrician in Sylacauga, and we believe he is capable to do a competent job.

We expect to get from Steve drawings, prices, etc., on the buildings, tanks, pumps, etc., in connection with the ink installation in Lufkin. Building will have to be fitted into the present area so that we can best utilize space available, leave room for expansion, etc. Joe expects to get cost information for duplicating the Lufkin setup and also investigate the possibility further of using underground tanks.

Plating tanks are in the plant, although some need to be insulated and covered on the outside. Also painted. They can be positioned in the Stereo room so that the plumbing and electrical work can be started. We are now purchasing the
3374 crane equipment for over the nickel tanks and this can be installed as soon as possible.

We plan on purchasing the library racks for holding plate boxes in Birmingham, and these will be assembled in the plant.

As things stand now we think that Joe Clinton should go to Sylacauga about the second week in March. He would be able to line up a lot of material which needs to be purchased locally and arrange for some of the work which must be done such as motor pit, ink tanks, racks, etc.

As things stand now, we figure that Joe would leave about March 15th, and stay in Sylacauga three or four weeks and return to Wilkes-Barre about April 1st, and stay maybe for the month of April. In the meantime he will get in touch with Buffalo to coordinate the material in the works, shipment of first items, etc., and then he would count on returning to Sylacauga again early in May for a few weeks. He wanted to have my approval of his thinking and I have given it, and I think

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he will go down and we will pursue along the lines laid out above unless we hear further from you.

Sincerely yours,

Joseph J. Gorman
JOSEPH J. GORMAN,

JJG/hlm

cc: Kenneth Koessler

3375 [——— for ident., P-129 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

CC: J.W.B., Tom, Walter Koessler, Roger

HEARST NEWSPAPERS,
Hearst Magazine Building,
57th Street at 8th Avenue,
New York 19, N.Y.
October 10, 1955.

Mr. J. J. GORMAN,
International Color Printing Co.,
268 George Avenue,
Wilkes Barre, Penna.

DEAR JOE: To provide a written understanding of the telephone agreement made between you and me for the sale of the Baltimore Magazine press (Hoe web #2022), I am briefly summarizing what we agreed on.

You have purchased all of the structure that constitutes one half of the press, including 12 plate and 12 impression cylinders, ink fountains, angle bars, pipe rollers, compensators, roll stands, a single right angle folder, rubber rollers and the complete 100/7½HP General Electric drive.

The price agreed on is \$32,500 as and where the press stands in Baltimore.

You will bear the expense for dismantling and removal of the equipment from the building. However you wish to delay

this work for a month at least, until your plans are better formulated.

Before the dismantling work is begun you will send a check for the purchase price directly to the Baltimore News-Post.

If this note covers our entire agreement as you understand it, will you please write me an acknowledgment. If it is otherwise please write me too.

Sincerely,

EUGENE MULLER.

EM:mcc

3376 [For ident. P-130 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

SEPTEMBER 10, 1958.

Memo to: JOE GORMAN

cc: JOHN BOOTH, JOE CLINTON, BESSIE, VINCE, C.C.C., ROGER, JOHN GORMAN, JACK HOLTHAUS

Subject: Stereotype equipment for Sylacauga.

In the first part of Joe Clinton's report covering our meeting in Buffalo he lists web detectors. Buffalo says that they could supply them for \$1400.00, but it must be kept in mind that this \$1400.00 covers the cost of the web break devices and the web break detectors only. We have the proposition of making brackets and installing the system and Roger is presently in touch with Harold Rosenberg of Buerks for a layout.

Jack Koessler, Clinton reports, would send us down a layout of the Lufkin mat department. However, we are proceeding on our own layout and presently we have the mat department's room finished and the fans installed and the heat connected up. We are waiting for the four-way cutter and the Niagara shears from Buffalo.

Suppose we make two headings covering machinery and equipment that Buffalo is to supply for Sylacauga and what Wilkes-Barre is to supply for Sylacauga and a third heading

for what equipment they are going to be able to purchase in Sylacauga.

Buffalo:

Tables (These tables will be made the same as the tables used in Dun-
kirk and Lathin).

Crane

Niagara Shavers

Metal Pots

3677

Spouts and Pumps

Crane at Casting House
(Buffalo will supply
these)

Plate Splitter

Ring Cutter

Routers (Triple, Double
and Single Routers are
now being made in
Buffalo)

Press Press

Shaver (This particular
kind of shaver is for re-
ducing finished plates).
Hess & Barker Trimmers

Milling Machine for mill-
ing the slot for head-
ings

Milling Machine for rub-
ber headings

Wilkes Barre:

Thermos Mat Heater
(This will be ordered
from W. H. when we
have the benefit of Lou-
is's experience)

Vacuum Pumps

Four way shavers (Will
supply if deemed neces-
sary)

Casting Box (We are now
waiting for a price
from Har & Co. in order
our Parsons casting
box so that it will be
water cooled at the
rate and cost)

Precision Shaver (Roger
is buying our Parsons
precision shaver to be
sent to Buffalo for the
installation of a hand-
ling front)

Tail Cutter (We have
space)

Sta III (We have a
space)

Nickel Equipment (We have
now our tanks laid out
on the second floor of
No. 4 building in W. H.
and it looks like we'll
have to purchase some
tanks because the ones
we have don't seem to
be large enough. We
counted the rectifier
equipment and we'll
probably have to buy a
filter. We are waiting
until Jack Rooster
comes down to W. H. to
get this whole thing
straightened out)

Bumping Block (We have
one in Wilkes Barre
which we will send to
Sylacauga)

Sylacauga:

Mat Press

Pressor Equipment
(We'll purchase this
when we have a pic-
ture and if we wait
until we get laid out in
Sylacauga)

Plate Boxes

Plate Racks

I think there is enough covered by this present memo and Buffalo will follow through on this equipment for Sylacauga. I think our stereotype requirements will be handled.

In connection with press equipment we decided that when the press cylinders and clutches are taken care of at the Sheldon Plant we should then proceed on press 2022. At present we are now working on the plate cylinders for press 2022 because of a kind of a hitch in our plans to go ahead with the clutches and

cylinders at the Sheldon. We are going to have a meeting either Wednesday or Thursday of this week to determine as to which press we will next install the clutches.

We talked about ink tanks, a paper baler, control panels; CO₂ equipment and other things for Sylacauga, but it looks to me that these could be handled in due time. Summarizing:

Wichita Falls:	Buffalo:	Sylacauga:
Thermox Mat Dryer?	Fablen	Mat Film
Vacuum Pumps	Ovens	Conveyor Equipment
Casting Box	Four way Shears?	Plate Boxes
Shaver	Niagara Shears	Racks
Tail Cutter	Metal Pot	
Sta-Hi	Spouts & Pumps	
Nickel Equipment	Ovens at Casting Box	
Damping Block	Plate Splitter	
	Ring Cutter	
	Router	
	Proof Press	
	Shaver for reducing finished plates	
	Hoon & Barker Trimmers	
	Milling Machines	

HLM

TOM BRENNAN.

[— for ident., P-131 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

3379

DECEMBER 12, 1958.

Memo To: Mr. Gorman

Copies: John Booth, Tom Brennan, Vince, Bessie, Four Extras, Roger, W. K., J. K., K. K., W. H.

At Meeting in Buffalo on Monday, November 24th, Tom Brennan and I went over the Sylacauga Stereotype layout with Jack Koessler and Steve Menser. The following is a summary of the decision, instruction, etc.

Buffalo have laid out the Stereotype Department and we have proceeded to make some of the physical changes to fit in with the new plan. They made a drawing locating all of the equipment, conveyor system, etc. We went over the drawing

and made some revisions on the proposal. Also, we went over all of the equipment required and I made the following note concerning just about everything we would use in the Sylacauga Stereotype Department.

PLATE TRUCKS. Buffalo have metal plate trucks which are used to carry dead metal from the Library back to the casting box. These trucks are made of a size to fit under the conveyors. It was decided they would make up twelve trucks in Buffalo for Sylacauga.

NICKEL TANKS. It was decided to get all new nickel tanks. They thought they had one extra tank in Dunkirk which they are not using. It was decided to use the high tanks which will accommodate plates two high. Measer is going to get the measurements for us and we are to figure on using all new tanks. The drawings and specifications which they used for their Dunkirk tanks will be given to us and it was decided we would attempt to have these tanks made up in the South. Also, we would try to have the rubber covered tanks taken care of down there.

RECTIFIERS.—We advised that we have enough of the necessary rectifier equipment to handle the operation. It was brought out that we would need one rectifier on the cleaning tank and one on the plating tank. We stated that we have two 1500 amp rectifiers.

We will need a clearance of twelve feet to carry out 3380 the nickel tank. It will be necessary to check the elevation drawings to determine if the present location is all right. (Roger will you please take care of this).

We will check the hoist which was received from Buffalo Color Press to see if this would be suitable to convey the racks and the nickeling operation. (Roger will you please look into this).

RACKS. Buffalo will supply us with the racks for double plate nickeling.

PLATE BOX RACKS. We will make up these racks ourselves. We can buy the material and have the racks put together in Sylacauga.

PLATE BOXES. A supplier in Sylacauga is making up for us one hundred third-page size boxes. These should be received shortly. After they are received we will send a half dozen to Buffalo for them to try them out. If these boxes work out all right, and we expect they will, we will have all of the Sylacauga plate boxes made in Sylacauga.

ROUTERS—Buffalo will supply all of the necessary routers.
ROUTER FOR RUBBER—Buffalo will supply this also.
MILLING MACHINE FOR GROOVING PLATES. Buffalo will supply.

MILLING MACHINE FOR RUBBER TITLES. Jack Koessler wishes to check further on this item.

HESS & BARKER MACHINES—We will need two—one left hand and one right hand. We are to order these.

SHAVER FOR REDUCING ROUTED PLATES—Buffalo will supply.

PROOF PRESS—Buffalo will order a Gloss Proof Press similar to what they have in Buffalo.

BUMPING BLOCKS. We are to secure these.

STEREOTYPE POTS. Steve Measer will order a six ton pot and a three ton pot from Wood. He will order the same size metal spouts they are using in Lufkin and Dunkirk.

SHAVER—We will use the shaver which was sent up from Wilkes-Barre.

3381 CC: Mr. J. W. Koessler, John Booth, JJG., Vince, Bessie, Joe Clinton.

[—— for ident., P-132 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

NOVEMBER 20, 1959.

Mr. KENNETH KOESSLER,
 Greater Buffalo Press,
 302 Grote St.
 Buffalo, N.Y.

DEAR KENNETH: The other day we paid John O'Malley, the Trustee for the Keystone Magazine Corporation \$35,910.00 for the following items:

1-Baler	\$ 1,700.00
1-Scale	525.00
1-Lathe	1,025.00
4-Sheridan Machines with trms	24,500.00
1-Gum Boring Machine	1,000.00
2-Lockers	100.00
2-G. E. Water Coolers	150.00
(See Att. List) Office Equipment	1,500.00
1-Rectifier	250.00
2-Tail Cutters	600.00
Miscellaneous	500.00
Total	\$39,910.00

In addition to this material we purchased, two months ago, 100 tons of newsprint for \$7,500.00. This newsprint is all consumed and it ran and printed very well—it was Beaver Wood Fiber Company paper.

I think we can completely equip our Sylacauga office from the office equipment at Keystone and have stuff to spare.

So far as I know what we purchased is now available and as per our telephone conversation you will let me know when we will start to move.

The last word I had from John O'Malley is that they are going to auction the stuff that remains at Keystone. I am sure we will get adequate notice and we will be in touch with you.

Sincerely yours,

TOM BRENNAN,
INTERNATIONAL COLOR PRINTING CO.

[——— for ident., P-133 in evid., H. T. Noel, Official Reporter,
U.S. District Court.]

3382

INTERNATIONAL COLOR PRINTING Co.,
Wilkes-Barre, Pa., October 14, 1959

Mr. J. W. KOESSLER,
Greater Buffalo Press,
Buffalo, N.Y.

DEAR WALTER: Prior to four years ago, when King Features asked for a price on a new supplement, we figured the exact number of hours which would be required and the new plant which would be required, etc., and then estimated the labor cost. We then figured overhead per thousand including newsprint, ink, twine, wrapping, power, light, oil, grease, packing, pay, taxes, vacations, etc. We figured on arriving at an operating profit of \$7.00 per hour per single width press on all new business.

Since four years ago we have gradually been increasing our desired profit per press hour until we are now at a point where we use \$15.00 instead of \$7.00. In other words we have more than doubled our operating profit on all new business. Our plan had to be worked out gradually so as not to run into

much opposition from
overhead and we al
that right now on al
more than four years
Sincerely yours,

rs,

JOSEPH J. GORMAN.

3383 [— for id

Repent., P-134 in evid., H. T. Noel, Official
INTERNATPRter, U.S. District Court.]

Newspaper COONAL COLOR PRINTING CO.,

26 nic and Magazine Supplements,

Phone, 3 George Avenue, Wilkes-Barre, Pa.,

Total Capacity 40 Villkes-Barre VA 4-7871, August 23, 1955.

Branch Plant, 16 Million, Four-Page Sections Per Week,
43013 7 South Street, Peoria, Ill., Phone, Peoria

MR. WALTER KOES
Greater Buffalo Pro LER,
Buffalo, N.Y. ss,

DEAR WALTER: J

We printed about st a brief note about the first six months.
against a little less 30,000,000 four page sections weekly, as
number printed is an 32,000,000 last year. The difference in
from us—Toledo, Y principally the amount which you "took"
but in the end ever ungstown and Erie. Our loss was your gain
cerned. I would sa thing worked out satisfactorily for all con-
Weekly in operating that the transfer cost us about \$1,000.
Wilmington or Wor profit. Certainly glad you got it, instead of

For the first tw
(total profit befo
\$108,212.08. This ye
we charged more in
We have estimat
half of year. Deprec
after taxes, \$45,000
\$70,000.

In brief, for the fi
which I gave you y
stock.

In the period we charged direct to operating costs, \$40,000 for work done relocating stereo room, rebuilding presses, automatic pasters and a new folder for one of Goss presses. We capitalized about \$60,000. of improvements purchased on outside. Total cost for all improvements in period \$124,071., including some labor. Dividends paid to Govin family in period \$17,400. We have also paid off the \$35,000. note.

If we can maintain present rate of operating profit we should be able to set a schedule, starting about January 1, for repayment to bank. I would consider payment of \$35,000. note if we can handle this year.

We have not borrowed any money from local banks and have maintained a substantial balance. In this we have been aided by the fact that only a small amount of income tax was paid this year. (as explained in earlier letters.)

3384 There is no doubt that the margin of profit is too small for comfort or safety and it will be necessary to find substantial savings in ink, registry time, stereotype casting and elimination of one or more plants.

A very substantial saving will be necessary after we get a Southern plant started and that is why I don't feel we ought to get into a building which might prove a heavy burden to carry. On the other hand we don't want to operate on a basis which will not allow for efficiency.

Will send a June Balance Sheet along, and one of these days when I have more time I will try to explain various items a little more thoroughly.

I don't want to overload you with words, but at the same time think you should have the fullest explanation I can possibly give.

Best regards,

Joe

JOSEPH J. GORMAN.

JJG/RB

3385 [——— for ident., P-135 in evid., H. T. Noel, Official
Reporter, U.S. District Court.]

INTERNATIONAL COLOR PRINTING CO.,

NEWSPAPER COMIC AND MAGAZINE SUPPLEMENTS,

Phone, Wilkes-Barre VA 4-7871,

368 George St. Inc., Wilkes-Barre, Pa., December 17, 1959.

*19 Color Presses. Total Capacity 40 Million Four-Page Sections
Per Week.*

Mr. J. W. KOENSLER,

Greater Buffalo Press,

302 Grote Street,

Buffalo 7, New York

DEAR WALTER: Please let me know if you gave King Features
a production increase for Youngstown, Toledo and Erie at the
beginning of this year. I have in mind the possibility that if you
did not increase your price to King, Mr. Nicht has an argument,
maybe not a very good one—against an increase for us on the
work we are doing for King.

Sincerely yours,

J. J. GORMAN

JOSEPH J. GORMAN.

JJG/HLM

1590

3400 [——— for ident., P-155 in evid., H. T. Noel, Official
Reporter, U.S. District Court.]

Officers of International Color Printing Company from the
year 1950 to 1959.

1950

President.....Joseph J. Gorman
1st Vice President.....R. R. Govin
2nd Vice President & Treas.. John W. Booth
Secretary.....William S. McLean
Asst. Secretary.....Bessie J. Gorman

1951

The same as above.

1952

The same as above.

1953

The same as above.

1954

The same as above.

Early part of 1955

The same as above.

October—1955

President.....Joseph J. Gorman
Vice President.....Kenneth L. Koessler
Secretary.....William J. Hammond
Treasurer.....John W. Booth

1956

Same as above.

1957

Same as above.

1958

Same as above.

1959

Same as above.

1960

Same as above.

JOSEPH J. GORMAN.

3401 [D-5 for ident., D-2 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

NOVEMBER 24, 1950.

Mr. HORACE POWELL,
Business Manager,
The Journal-Constitution,
Atlanta, Georgia.

DEAR MR. POWELL: This is to confirm our recent conversation with respect to the establishment of a Southern comic printing plant in the event of your acceptance of our direct proposal to produce comic sections of The Journal-Constitution.

Present conditions of the newsprint market and building industry make it impractical, if not impossible, to launch such a project at this time. However, we will agree to get started on such a plant within one year after newsprint becomes available in the South at the contract price and any building restrictions imposed by the federal government because of war or defense needs have been cancelled. The object of establishing such a plant would be to materially reduce transportation charges on your comics, as well as those which we are printing or would be printing for other newspapers in the South.

It is difficult to specifically define such a program, but our intention would be to establish the Southern plant at the earliest possible practical time.

With thanks for your kindness and consideration during our visit, I am,

Very sincerely yours,

J. W. KOESSLER,
President.

H

3402 [D-4] KING FEATURES SYNDICATE,
Tel. Murray Hill 2-5600,
Cable Address: KINGSYN New York,
235 East 45th Street, New York 17, N.Y., October 7, 1958.

FRANK J. NICHT, General Sales Manager.

Mr. J. WALTER KOESSLER,
Greater Buffalo Press, Inc.,
302 Grote Street,
Buffalo 7, New York.

DEAR MR. KOESSLER: I regret to have to tell you that the agreement which we sent you under date of July 31 has been

disapproved by Mr. Berlin. In view of this fact I am sure that our Board will not approve or ratify it.

Therefore I must ask that you consider it to be no agreement.

Yours very truly,

Frank J. Nicht,
FRANK J. NICHT.

FJN:ML

3403 [D-5] THE GREATER BUFFALO PRESS INC.,
302 Grote Street, Telephone BEdford 6410, Buffalo
7, New York,

Web Press Color Printing,
October 13, 1958.

[Received, Oct. 14, 1958, Domestic Sales Dept.]

Mr. F. J. NICHT,
King Features Syndicate,
235 E. 45th St.,
New York, New York.

DEAR FRANK: I have received your letter of Oct. 1, 1958 in reference to the agreement which you sent me July 31, 1958 and have noted its contents.

I have had no opportunity to present this agreement to our own board of directors for their approval.

Upon receipt of your letter I presented it to an informal meeting of our directors and they disapproved.

Since the agreement has not been approved and cannot be approved by either corporation it must be considered void and no agreement.

Very truly yours,

J. W. KOESSLER,
President.

JWK:bv
cc: A. R. Graustein
F. C. McLearn
10/14/58

3404 [D-6] [Caption Omitted in Printing]

**INTERROGATORIES PROPOUNDED BY THE
PLAINTIFF**

TO: The Hearst Corporation, Defendant:

PLEASE TAKE NOTICE, that pursuant to Rule 33 of the Federal Rules of Civil Procedure, the United States of America, plaintiff, propounds the following interrogatories to be answered by the above-named defendant:

No. 1. Set forth the names of such newspapers which had color comic supplements furnished to them, pursuant to written contracts entered into with King Features Syndicate, and which contracts in the period from 1954 to the present were cancelled, terminated, or otherwise not renewed, by reason of such newspapers entering into contracts with Greater Buffalo Press, Incorporated, or any of its subsidiaries or affiliates, and the dates thereof.

No. 2. State the names of such newspapers which had their color comic supplements printed at International Color Printing Company's plants, or Greater Buffalo Press plants in New York, pursuant to contracts with such newspapers and
3405 King Features Syndicate, and which supplement printing was transferred with in the duration of such contracts, or the renewals thereof, to the Southwest Color Printing Corporation at Lufkin, Texas, and the dates of such transfers.

No. 3. State the dollar figures setting forth the sum paid by King Features Syndicate to Greater Buffalo Press, or any of its subsidiaries or affiliates, for the printing of all color comic supplements of newspapers, under contract with King Features Syndicate, at the Lufkin plant of the Southwest Color Printing Corporation for each of the years 1958 through 1961.

No. 4. State the names of such newspapers which had their color comic supplements printed at International Color Printing Company's Wilkes-Barre plant, pursuant to contracts with King Features Syndicate and such newspapers, and which supplement printing was transferred within the duration of such contracts, or the renewals thereof, to the Dixie Color Printing Corporation at its Sylacauga plant, and the dates of such transfers.

No. 5. Set forth the dollar figures stating the sum paid by King Features Syndicate to Greater Buffalo Press, or any of its subsidiaries or affiliates, for the printing of color comic supplements of newspapers under contract with King Features Syndicate, by Dixie Color Printing Corporation for each year to date.

No. 6. Set forth the total volume of production, in terms of 4-page sections, of color comic supplements printed for the newspapers which were the subject of the transfers referred to in:

- 3406 (a) Interrogatory 2; and
(b) Interrogatory 4.

Dated: April 28, 1964.

Elliott H. Feldman
ELLIOTT H. FELDMAN,
Donald J. Williamson
DONALD J. WILLIAMSON,
Attorneys, Department of Justice.

3407

(Caption omitted in Printing)

ANSWER OF DEFENDANT THE HEARST CORPORATION TO
INTERROGATORIES DATED APRIL 28, 1964 SERVED ON IT
BY PLAINTIFF

INTERROGATORY No. 1

Newspaper Contracts	Cancellation Date
Abilene, Tex. NEWS.....	12/25/63
Big Spring, Tex. HERALD.....	"
Corpus-Christi, Tex. CALLER TIMES.....	"
Dennison, Tex. HERALD.....	"
Greenville, Tex. Banner.....	"
Marshall, Tex. NEWS.....	"
Paris, Tex. NEWS.....	"
San Angelo, Tex. STANDARD.....	"
Snyder, Tex. NEWS.....	"
Dallas, Tex. TIMES HERALD.....	12/27/63
Erie, Penna. TIMES NEWS.....	9/21/63
Lake Charles, La. AMERICAN PRESS.....	8/11/63
Monroe, La. NEWS-STAR-WORLD.....	12/30/63
Shreveport, La. TIMES.....	9/2/63
Wichita Falls, Tex. TIMES & RECORD NEWS.....	7/1/63
Austin, Tex. AMERICAN STATESMAN.....	11/6/63
Port Arthur, Texas.....	11/6/63
Waco, Texas.....	"
Birmingham, Ala. NEWS.....	3/17/64
Houston, Tex. POST.....	1/4/64
Miami, Fla. HERALD.....	5/10/64

INTERROGATORIES No. 2 AND No. 6

3408

LIST OF K.F.S. READYPRINT CLIENTS TRANSFERRED TO LUFKIN

From I.C.P. Wilkes-Barre

Newspapers	Dates of Transfer to Lufkin	Circ. in 4's When Disc.
*Houston, Tex., POST	12/14/58	662, 500
*Austin, Tex., AMERICAN STATESMAN	1/25/59	177, 000
*Port Arthur, Tex., NEWS	1/25/59	57, 200
*Waco, Tex., TRIBUNE-HERALD	1/25/59	150, 000
Total		1, 046, 700

*Subsequently lost to Lufkin.

From G.B.P. Dunkirk

	Dates of Transfer	Present Circ. in 4's
Burlington, Iowa, HAWKEYE	12/7/58	42, 000
Casper, Wyo., TRIBUNE-HERALD & MORN- ING STAR	7/30/61	38, 000
Colorado Springs, COLO FREE PRESS	7/30/61	39, 000
Hutchinson, Kan., NEWS HERALD	6/12/60	109, 000
Joplin, Mo., GLOBE	7/30/61	71, 500
Salina, Kan., JOURNAL	6/12/60	67, 000
Santa Fe, N.M., NEW MEXICAN	12/7/58	34, 800
Springfield, Mo., NEWS LEADER	7/30/61	149, 000
Topeka, Kan., CAPITAL	6/12/60	114, 000
Tulsa, Okla., WORLD	12/7/58	525, 000
Tyler, Tex., COURIER TIMES	12/7/58	59, 000
**Wichita, Kans., EAGLE BEACON	10/16/60	501, 000
Total		1, 749, 300

**While printed in Wilkes-Barre, the Wichita, Kans. EAGLE was an 8-page standard size section with a run of 170,000. It was transferred to Lufkin effective June 12, 1960.

The Wichita Kans. BEACON, long printed in Peoria by ICP for KFS, was transferred to GBP's Dunkirk plant when the Peoria operation was closed down.

The Wichita, Kans. EAGLE suspended publication and the two newspapers were combined as the EAGLE-BEACON, printed in Lufkin as a 12-page standard section effective with the October 16, 1960, release.

INTERROGATORY No. 3

Year	Sum paid by King Features Syndicate
1958	\$45, 097. 03
1959	578, 845. 80
1960	686, 324. 64
1961	705, 028. 52

3409

INTERROGATORIES No. 4 and No. 6

LIST OF K.F.R. READYPRINT CLIENTS TRANSFERRED FROM L.C.P. WILKES-BARR
TO DIXIE COLOR PRINTING, SYLACAUGA, ALA.

Newsprint	Date of Transfer to Sylacauga	Present Circulation
Atlanta, Ga., GENERAL ADV.		
Bristol, Va., HERALD COURIER	10/13/63	59,000
Clearwater, Fla., SUN	"	50,000
Cadaden, Ala., TIMES	"	50,000
Ironton, O., TRIBUNE	"	20,000
Martinsville, Va., BULLETIN	"	27,000
Montgomery, Ala., ADVERTISER	3/24/63	176,000
Spartanburg, S.C., HERALD JOURNAL	10/13/63	88,000
Tuscaloosa, Ala., NEWS	"	43,500
Augusta, Ga., CHRONICLE	12/22/63	128,000
Charlotte, N.C., OBSERVER	5/5/63	613,000
Chattanooga, Tenn., TIMES	"	262,500
Columbus, Ga., LEDGER ENQUIRER	8/4/63	174,000
Huntsville, Ala., TIMES	10/23/63	92,000
Jacksonville, Fla., TIMES-UNION	6/23/63	343,000
Orlando, Fla., SENTINEL-STAR	7/7/63	456,000
St. Petersburg, Fla., TIMES	9/1/63	427,500
Savannah, Ga., NEWS	7/28/63	160,500
Tampa, Fla., TRIBUNE	5/5/63	337,000
Total		3,919,300
*Miami, Fla., HERALD:		
Present Size, 16 Std.		
Present Circulation, 413,000.		

*Subsequently lost to Sylacauga.

INTERROGATORY No. 5

Year	Payments made for Sylacauga's Printing
1963	\$833,319.27
1964 (thru April 30)	581,126.96

Dated: New York, New York, May 28, 1964.

GALLOR CLIMENKO & GOWD
By: /s/ JESSE CLIMENKO,
(A Member of the firm)

Attorneys for Defendant,
THE HEARST CORPORATION,
360 Lexington Avenue,
New York 17, New York.

3410 **RAY K. ROGERS**, being duly sworn, deposes and says:

That he is the Sales Manager of **THE HEARST CORPORATION**, a defendant in the above entitled action; that he has read the foregoing Answer of Defendant The Hearst Corporation to Interrogatories; and the same are true to the best of his information and belief.

/s/ **RAY K. ROGERS**.

[Caption Omitted in Printing]

3411 **COMPLAINT** (As Amended 10/14/65)

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this action against the defendants named herein, and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted against the defendants named herein under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended (15 U.S.C. 4), entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", commonly known as the Sherman Act, and under Section 15 of the Act of Congress of October 15, 1914, c. 323, 38 Stat. 736, as amended, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", commonly known as the Clayton Act, in order to prevent and restrain violations by the defendants, as hereinafter alleged, of Sections 1 and 2 of the Sherman Act and Sections 3 and 7 of the Clayton Act.

2. The defendants transact business within the Western District of New York and are found therein.

3412

II

THE DEFENDANTS

3. Greater Buffalo Press, Incorporated (hereinafter referred to as Greater Buffalo), a corporation organized and existing under the laws of the State of New York, with its principal place

of business in Buffalo, New York, is hereby made a defendant herein. Greater Buffalo engages in the printing of color comic supplements; it is the largest printer of color comic supplements in the United States. It maintains a printing plant at Buffalo, New York and maintains, through its subsidiaries, The International Color Printing Company, Southwest Color Printing Corporation and Dixie Color Printing Corporation, plants at Wilkes-Barre, Pennsylvania, Lufkin, Texas and Sylacauga, Alabama, respectively. It also utilizes the printing facilities of the Great Lakes Color Printing Corporation of Dunkirk, New York. Greater Buffalo's business includes the sale of its color comic supplement printing services to newspapers and to comic feature syndicates. Greater Buffalo is charged with the violations, hereinafter alleged, of Sections 1 and 2 of the Sherman Act and Section 7 of the Clayton Act.

4. The Hearst Corporation (hereinafter referred to as Hearst), a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in New York, New York, is made a defendant herein. Hearst, through its unincorporated division, King Features Syndicate (hereinafter referred to as King), is engaged in the business of licensing copyrighted newspaper features, including color comic features, to newspapers. King maintains a sales force, members of which regularly visit the offices of newspapers throughout the

United States. King also engages in the business of selling color comic supplement printing services, not only for the printing of its own copyrighted features, but for the features of competing comic feature syndicates as well. King contracts to provide color comic supplement printing services with or without the copyrighted features which it licenses. It does not engage in any printing but contracts with a printer to fulfill its commitments for color comic supplement printing. Hearst is charged with the violations, hereinafter alleged, of Sections 1 and 2 of the Sherman Act and Section 3 of the Clayton Act.

5. Newspaper Enterprise Association, Inc. (hereinafter referred to as NEA), a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Cleveland, Ohio, is hereby made a defendant herein. NEA, the voting stock of which is owned by E.W. Scripps Company, Inc., Cincinnati, Ohio, is engaged in the business of

ensing copyrighted newspaper features, including color comic
atures, to newspapers. NEA is one of the largest such syndi-
ates in the United States and maintains a sales force, members
which regularly visit the offices of newspapers throughout the
United States. NEA also engages in the business of selling color
comic supplement printing services, not only for the printing
of its own copyrighted features, but for the features of com-
eting comic feature syndicates as well. NEA also contracts to
provide color comic supplement printing services with or
without the copyrighted features which it licenses. It does not
engage in any printing but contracts with a printer to fulfill
its commitments for color comic supplement printing. NEA is
charged with the violations, hereinafter alleged, of Sections 1
and 2 of the Sherman Act and Section 3 of the Clayton Act.

6. The International Color Printing Company, also known as
International Color Printing Co., Inc. (hereinafter re-
ferred to as International), a corporation organized and
existing under the laws of the State of Pennsylvania,
with its principal place of business at Wilkes-Barre, Pennsyl-
vania, is hereby made a defendant herein. International engages
in the printing of color comic supplements and operates two
color printing plants in Wilkes-Barre, Pennsylvania. Since 1954,
or prior thereto, International, pursuant to written contracts
entered into with King, is, and has been, obligated to print color
comic supplements exclusively for King. In or about June 1955,
International's out-standing stock was purchased by the de-
fendant, Greater Buffalo. International is charged with the
violation, hereinafter alleged, of Section 7 of the Clayton Act.

7. Southwest Color Printing Corporation, a corporation or-
ganized and existing under the laws of the State of Texas, with
its principal place of business in Lufkin, Texas, is hereby made
a defendant herein, for purposes of relief.

8. Dixie Color Printing Corporation, a corporation organized
and existing under the laws of the State of Alabama, with its
principal place of business at Sylacauga, Alabama, is hereby
made a defendant herein, for purposes of relief.

9. Whenever in this complaint reference is made to any act,
deed or transaction on the part of the defendants, such allega-
tion shall be deemed to mean that the officers, directors, agents
or employees of said defendant authorized, ordered or did such
act, deed or transaction for, or on behalf of, such defendant

while actively engaged in the management, direction and control of its affairs. Whenever reference is made to any act, deed or transaction on the part of King, such allegation shall be deemed to mean that the officers, directors, agents or employees of the defendant Hearst authorized, ordered or did such act, deed or transaction while actively engaged in the management, direction and control of Hearst's affairs.

III

THE CO-CONSPIRATOR

10. Eastern Color Printing Company (hereinafter called Eastern), Waterbury, Connecticut, is hereby named as co-conspirator. Eastern engages in the business of printing, among other things, color comic supplements for sale to newspapers. It maintains its printing facilities in or near, and main offices at Waterbury, Connecticut.

11. Whenever in this complaint reference is made to any act on the part of a co-conspirator, such allegation shall be deemed to mean that the officers, directors, agents or employees of the named co-conspirator, authorized, ordered or did such act, deed or transaction for, or on behalf of, such co-conspirator while actively engaged in the management, direction and control of its affairs.

IV

DEFINITION

12. The term "color comic supplements", as used herein, means supplements to Sunday or Saturday newspapers, printed in color, and containing, among other things, copyrighted comic features.

V

TRADE AND COMMERCE INVOLVED

13. Virtually every newspaper in the United States which publishes a Sunday edition distributes a color comic supplement with each copy of such edition. Color comic supplements range in size from four to twenty-four pages and consist of copyrighted features printed in color. The copyrighted features include, but are not limited to, comic strips, romance and adventure stories, cartoons, games and puzzles.

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ally licensed t
"syndicates". D
defendant NEA
cation of comic
tract. Along w
"matrices", or m
dicates ship the
Buffalo or Inte
color comic sup
are equipped to

rights to publish the copyrighted comic fea-
appear in color comic supplements are gen-
newspapers by persons or companies called
defendant Hearst, through its King division, and
as well as other syndicates, license the publi-
tures to newspapers, usually by written con-
such rights the syndicates furnish the
ded designs, of such comic features. The syn-
matrices, for printing, to defendants Greater
tional, to co-conspirator Eastern, to other
ent printers, or direct to newspapers which

15. Approxin
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tor Eastern, or
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or from other
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at their own color comic supplements.
ly eighty-six per cent (86%) of the total
pers in the United States which distribute
ents with their Sunday or Saturday editions
supplements themselves. The color comic
uted by such newspapers are printed by the
Buffalo and International, the co-conspira-
other printers of color comic supplements.
rally provide the newsprint for the color
which they print, using for such printing
n the matrices received from King and NEA
comic feature syndicates. Some newspapers,
newspapers in major markets, and some news-

16. The afor
service, includi
furnishing of n
obtained by ne
with the defend

tain facilities for printing color comic sup-
their own color comic supplements.
mentioned color comic supplement printing
the casting of color plates from matrices, the
print and the printing of the supplements, is

one of t
pers through direct contract or arrangement
Greater Buffalo, the co-conspirator Eastern,
cates, I
ther color comic supplement printers, or by
their contracts
arrangement with the comic feature syndi-
defendant Greate
and NEA. King and NEA, in turn, fulfill
latter furnish t
printing through arrangements with de-
ments that Kin
ffalo or one of its printing subsidiaries. The

17. During
chases of color
ates and from

ewsprint and print the color comic supple-
l NEA supply to their newspaper customers.
period from 1954 to the present date, pur-
c supplement printing services from syndi-
comic supplement printing companies were

approximately \$28,000,000 per year. Of such annual purchases approximately \$9,000,000 were made from Greater Buffalo, \$10,000,000 from King and \$1,500,000 from NEA. Thus, during the aforementioned period, Greater Buffalo, King and NEA accounted for approximately seventy-three per cent (73%) of such purchases, or on the basis of color comic supplement units sold, approximately eighty per cent (80%).

18. From 1954, or prior thereto, to the present date, King has maintained contracts with International, which operates two color printing plants in Wilkes-Barre, Pennsylvania. By the terms of such contracts and subject to certain conditions, International is, and has been, obligated to print color comic supplements exclusively for King. In addition, during the aforementioned period King has entered into arrangements or contracts with Greater Buffalo whereby Greater Buffalo has furnished newsprint and printed color comic supplements for supplement printing service customers of King.

19. Defendant NEA contracts with newspapers to furnish them with color comic supplement printing services. NEA arranges or contracts with Greater Buffalo and other printing companies, which actually furnish the newsprint and the color printing for NEA's newspaper customers.

20. Defendants Greater Buffalo, Hearst, NEA and International, and the co-conspirator Eastern, fulfill their 3418 contracts for color comic supplement printing through printing performed in plants in Buffalo, New York, Wilkes-Barre, Pennsylvania, Lufkin, Texas and Waterbury, Connecticut. The color comic supplements printed at these plants are shipped in interstate commerce to newspapers throughout the United States.

VI

OFFENSES CHARGED

Violations of Section 1 of the Sherman Act

21. The defendants Greater Buffalo, Hearst and NEA, the co-conspirator Eastern, and others to the plaintiff unknown, have been engaged in an unlawful combination and conspiracy which began in or about January 1954, or prior thereto, and has continued up to and including the date of this complaint, in

restraint of the above-described interstate trade and commerce, in violation of Section 1 of the Sherman Act.

22. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding and concert of action between the defendants Greater Buffalo and Hearst, others to the plaintiff unknown, and, since in or about November 1955, or prior thereto, the defendant NEA and the co-conspirator Eastern, the substantial terms of which have been and are:

- (a) to refrain from soliciting color comic supplement printing business from each other's customers; and
- (b) to maintain and stabilize the price of color comic supplement printing in the United States.

23. During the period of time covered by this complaint, the defendants and the co-conspirator, and others to the plaintiff unknown, for the purpose of effectuating the aforesaid combination and conspiracy, have done, among other things, the following:

3419 (a) In or about January or February 1954, representatives of the defendants Greater Buffalo and King held meetings in New York City, New York, at which, among other things, they agreed that:

(1) Greater Buffalo and King would divide between themselves the business of supplying color comic supplement printing services to the Gannett newspapers published in Utica and Binghamton, New York; and

(2) Greater Buffalo would pay King fifty dollars (\$50) per week to refrain from offering to the Waterloo Courier, Waterloo, Iowa, prices below those of Greater Buffalo for color comic supplement printing, as long as Greater Buffalo would service this account.

(b) Greater Buffalo and King did those things they agreed to do, pursuant to the agreements described in subparagraph (a);

(c) In or about November 1955, representatives of King and the co-conspirator Eastern held a meeting in New York City, New York, at which they agreed, among other things, that King and Eastern would refrain from soliciting each other's established newspaper accounts in the sale of color comic supplement printing services. King and Eastern have continued this arrangement to the date of this complaint; and

(d) In or about November 1955, representatives of the defendants King, NEA and Greater Buffalo held a meeting at the

Hotel Beverly in New York City, New York, at which they agreed, among other things, that King and NEA would refrain from soliciting each other's established newspaper accounts in the sale of color comic supplement services and keep knowledge of such agreement confined to their respective sales organizations. Pursuant to this arrangement, NEA did the following, among other things, when requested to submit bids to newspapers or their representatives:

(1) In or about March 1957, NEA submitted a bid to the Jackson, Mississippi, State Times at an artificially high and non-competitive price;

(2) In or about January 1956, NEA refused to submit a price quotation to an agent for the General Newspaper group in Atlanta, Georgia; and

(3) In or about January 1956, NEA refused to submit a price quotation to the publisher of the Tupelo, Mississippi Journal.

Violations of Section 2 of the Sherman Act

24. The defendants Greater Buffalo, Hearst and NEA, the co-conspirator Eastern, and others to the plaintiff unknown, have been engaged in an unlawful combination and conspiracy which began in or about January 1954, or prior thereto, and has continued up to and including the date of the filing of this complaint, to monopolize, the above-described trade and commerce in color comic supplements, in violation of Section 2 of the Sherman Act.

25. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding and concert of action among the defendants Greater Buffalo and Hearst, others to the plaintiff unknown, and since in or about November 1955, or prior thereto, the defendant NEA and the co-conspirator Eastern, to monopolize, for Greater Buffalo, the printing of color comic supplements and the sale of said printing services through the sales organizations of the defendants Greater Buffalo.

3421 Hearst and NEA, the substantial terms of which have been and are that they agreed to the terms set forth in subparagraphs (a) and (b) of paragraph 22 of this complaint, which subparagraphs are here realleged with the same force and effect as though said subparagraphs were here set forth in full.

26. In effectuation of the offense alleged in paragraph 24 of

this complaint, the defendants Greater Buffalo, Hearst and NEA, among other things, did the following:

(a) Those things which as hereinbefore alleged in paragraph 25, they combined and conspired to do;

(b) Defendant Greater Buffalo increased its share of the market for printing of color comic supplements from approximately forty-two percent (42%) to approximately eighty percent (80%) by the purchase, in or about June 1955, of all the outstanding stock of International;

(c) Defendant Hearst promoted, encouraged and assisted defendant Greater Buffalo in the aforesaid purchase of International;

(d) Defendant Greater Buffalo, in or about 1956, itself or through its subsidiary, Southwest Color Printing Corporation, commenced the erection of a plant at Lufkin, Texas, for the printing of color comic supplements; and

(e) Defendant Greater Buffalo, in or about 1957, itself or through its subsidiary, Dixie Color Printing Corporation, commenced the erection of a plant at Sylacauga, Alabama, for the printing of color comic supplements.

Violation of Section 7 of the Clayton Act

27. The effect of the aforesaid acquisition by the defendant Greater Buffalo of the defendant International, as set forth in subparagraph (b) of paragraph 26 hereof, which subparagraph is here realleged with the same force and effect as though said subparagraph were here set forth in full, has been, and
3422 will continue to be, a substantial lessening of competition or tendency to create a monopoly with respect to the aforesaid trade and commerce in the United States, in violation of Section 7 of the Clayton Act, in that competition between the defendants Greater Buffalo and International has been and will continue to be eliminated.

Violations of Section 3 of the Clayton Act

28. Beginning in or about 1954, or prior thereto, and continuing to the date of the filing of this complaint, defendants Hearst and NEA severally have sold, and presently sell, comic features to newspapers at discounts, rebates or reduced prices on the condition, agreement or understanding that such news-

paper purchasers shall not deal in the color comic printing services offered or sold by any competitor or competitors. The effect of said transactions and of such condition, agreement or understanding has been, and may continue to be, a substantial lessening of competition or tendency to create a monopoly in the sale of color comic supplement printing services in interstate commerce, in violation of Section 3 of the Clayton Act.

29. The violations alleged in paragraphs 21, 24, 27 and 28 of this complaint are continuing and will continue unless the relief hereinafter prayed for is granted.

VII

EFFECTS

30. The aforesaid offenses charged in paragraphs 21, 24, 27 and 28 of this complaint have had, among other things, the following effects:

(a) Newspapers in many parts of the United States have been denied the advantages of competitive bidding for the printing of their color comic newspaper supplements:

3423 (b) Newspapers not desiring the color comic supplement printing services offered by the defendants have been compelled to pay arbitrary prices for comic features;

(c) Price competition among defendants and the co-conspirator Eastern for the sale of color comic supplement printing has been eliminated;

(d) Competition in the printing and sale of color comic supplements has been suppressed and interstate trade and commerce in color comic supplements has been unreasonably restrained; and

(e) Printers offering color comic supplement printing services to newspapers have been restrained by the acts of these defendants from selling such services to newspaper customers.

PRAYER

WHEREFORE, PLAINTIFF PRAYS:

1. That the Court adjudge and decree that the defendants and the co-conspirator have combined and conspired to restrain and to monopolize, the interstate trade and commerce in the printing of color comic supplements and sale of color comic supplement printing services, in violation of Sections 1 and 2 of the Sherman Act.

2. That the acquisition by the defendant Greater Buffalo of the defendant International be adjudged a violation of Section 7 of the Clayton Act.

3424 3. That the aforesaid sales and contracts for sale by the defendants Hearst and NEA of comic features on the condition, agreement or understanding that the newspaper purchasers shall not deal in color comic supplement services being offered or sold by any competitor of the defendants be adjudged and decreed to be unlawful and in violation of Section 3 of the Clayton Act.

4. That the defendants, their officers, agents, directors and employees, and all persons acting or claiming to act on their behalf, be perpetually enjoined and restrained from continuing, reviving, or renewing, directly or indirectly, the aforesaid combination and conspiracy and the aforesaid contracts, agreements, or understandings, and from practices having the purpose or effect of continuing, reviving or renewing any of the aforesaid offenses or any offense similar thereto.

5. That the Court adjudge and decree that the defendant Greater Buffalo has caused the erection of plants at Lufkin, Texas, and Sylacauga, Alabama, and used the same in effectuating and maintaining the combination and conspiracy to restrain and to monopolize, and that the Court enter such orders, as it may deem appropriate and necessary, directing the defendant Greater Buffalo, and its officers, agents, directors and employees, and all persons acting or claiming to act on their behalf, to divest the ownership, control and participation in operating such plants in order to dissipate the effects of the violations herein alleged, and to establish free and unfettered competition in the trade and commerce herein involved.

6. That the defendant Greater Buffalo be required to divest itself of ownership of defendant International and that the defendant International be barred from selling any of its stock or assets to the other defendants or the co-conspirator
3425 named herein or to any of their officers, agents, directors or employees, or to any persons acting or claiming to act on their behalf.

7. That the defendants be required to take such other action as the Court may deem necessary and appropriate to dissipate the effects of their unlawful activities as hereinbefore alleged, and to permit and restore competition in interstate trade and

commerce in the printing and sale of color comic supplements.

8. That the Court schedule a separate hearing on questions of relief and consider at such hearing specific plans to be proposed by plaintiff, whereunder defendants Greater Buffalo, King and NEA will be required to take such steps as are necessary to sever their relationships with one another, with defendant International, and with defendants Southwest Color Printing Corporation and Dixie Color Printing Corporation.

9. That the plaintiff have such other, further and different relief as the nature of the case may require and the Court may deem just and proper in the premises.

10. That the plaintiff recover the costs of this suit. Dated: Buffalo, New York, 1961

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3426

[Caption Omitted in Printing]

PLAINTIFF'S PROPOSED FINDINGS OF FACT

Unless otherwise stated the following facts refer to events and practices during the period from January 1, 1954 through the trial of this action.

1. The printing of color comic supplements sold to newspapers, located throughout the country, for inclusion in their Sunday editions, is a line commerce.

2. Color comic supplements consist of newsprint printed with colored inks containing in the main reproductions of copyrighted color comic features, also advertising material, and at times other types of features. [Tr.-1593] ¹

3. While some newspapers print their own color comic supplements (hereafter referred to as supplements), the vast majority of supplements appearing in newspapers are printed by color comic printing companies (hereafter referred to as comic printers) which are engaged in the business of printing such supplements for newspapers. [P-62]

4. Many newspapers, which do not print their own supplements, are physically capable of printing such supplements. However, such newspapers find it economically advantageous to purchase such supplements, since the additional printing costs involved with available printing equipment, when employed primarily for black and white printing is utilized, exceed the charges incurred in purchasing the supplements. [Tr.-798-801]

Each supplement page instead of receiving one impression of ink must receive four impressions with an exacting job of alignment and adjustment for each impression. This results in some or all of the following additional costs: (1) use of trained personnel; (2) extra colored inks; (3) stereotype equipment and other machinery.

5. Newspapers purchase supplements by contracting 3427 directly with color comic printers, which print the supplements as ordered or by contracting with concerns, which do not themselves print the supplements, but have arrangements with printers for the latter to print such supplements and have them delivered to the newspapers. [P-62; Tr.-1599; 1798-99]

6. Newspapers contemporaneously with contracting for the purchase of supplements, contract for the purchase of the rights to the copyrighted comic features which appear in such supplements. Such contracts are entered into after negotiations by newspapers with syndicates, and other concerns, which license

¹ "Tr.-" refers to transcript pages.

the rights for the subject matter of the comics and other features which appear in the supplements. [Tr.-1596; 1617; 1709-1800]

7. Generally, the fees charged newspapers for the licensing of copyrighted features contained in supplements are not made pursuant to published price lists, but are the result of bargaining negotiations between the newspaper and the licensor. [Tr.-1823-25; Deposition, Frank J. Nicht, 1961, p. 20]

8. The newspaper syndicates or service organizations licensing newspapers with the rights for features have at their disposal, either by the employment of skilled personnel or through commissions paid to such personnel, the works of artists, cartoonists, and other feature writers. [Tr.-1838-39]

9. The newspapers in selecting particular comic features desire such features which have readership, or an actual or potential public following. However, the ability of a newspaper to obtain features is limited to those which are not already licensed under an exclusive arrangement to other newspapers in competition with it. On the other hand, the syndicate's success lies in its ability to offer not only features which are desirable, but available because of no prior exclusive commitments. [Tr.-1848-49; 1105-08]

10. In 1955, there were seven significant comic supplement printers. The supplement printing business of these comic printers was obtained by either one or two of the following methods. Firstly, by contracts directly between the comic printers themselves and the newspaper account. Secondly, by non-printing concerns which solicited and contracted to supply the supplements to the newspapers. They then ordered such printing from comic printers, with which they had previously arranged for the printing and delivery of the supplements to such newspapers as they would specify. The significant comic printers were:

Greater Buffalo Press, Inc.
Buffalo, New York
The International Color Printing
Company
Wilkes-Barre, Pennsylvania
Buffalo Colorpress, Inc.
Buffalo, New York
Eastern Color Printing Company

Waterbury, Connecticut
Acme Colorprint Company
San Bernardino, California
Southern Colorprint
Newport News, Virginia
World Color Press, Inc.
St. Louis, Missouri

A. Of the foregoing comic printers, two printers, The International Color Printing Company and Buffalo Colorpress, Inc., did not engage actively in soliciting and selling supplement printing directly to newspapers. As hereinafter set forth International printed exclusively for King Features Syndicate's newspaper customers, while most of the sales of supplements printed by Buffalo Colorpress were handled by Newspaper Enterprise Association, Inc. [Tr.-1286; 1600-1601]

11. By 1955, and immediately prior thereto, the two largest comic printers were Greater Buffalo Press, Inc. (hereafter referred to as Greater Buffalo) and The International Color Printing Company (hereafter referred to as International). Greater Buffalo's weekly volume of printing for the year 1955, measured in terms of 4-page sections, amounted to approximately 26,843,474 fours, while International's weekly volume of printing for the same year was about 27,237,658 fours. [P-62]

A. Greater Buffalo and International in the year 1955 each accounted for at least five times the volume printed by any one of the other significant comic printers. [P-62]

DEFENDANTS

Greater Buffalo Press, Inc.

12. Greater Buffalo in 1955 was a corporation organized and existing under the laws of the State of New York, with its principal place of business in Buffalo, New York, and had facilities for printing such supplements at Buffalo and Dunkirk, New York. [P-138, pars. 1, 3]

13. Greater Buffalo solicits and sells directly to newspaper supplements which it prints at its own facilities. It also prints supplements for newspapers, by arrangement with syndicates and other service organizations, which have contracted with newspapers to provide such supplements. [Tr.-789-790; 847] Greater Buffalo's annual gross receipts in 1954, for the sale and printing of supplements, were approximately \$8,613,000. [P-138, pars. 2, 15]

A. Greater Buffalo had commenced the printing of such supplements in 1933 at its Buffalo, New York, plant with a capital investment of \$3,000 by its principal stockholders. [Tr.-782; 788; P-138, par. 2]

15. Greater Buffalo since 1955, through its wholly-owned subsidiary corporations, commenced operations for the printing of supplements at additional plants in Lufkin, Texas, and Sylacauga, Alabama. [P-138, pars. 20, 21; Tr.-820]

16. Southwest Color Printing Corporation and Dixie Color Printing Corporation are wholly-owned corporations of Greater Buffalo and are named defendants for purposes of relief. Such defendant corporations and their time and place of incorporation are as follows:

3430 A. Southwest Color Printing Corporation (hereinafter referred to as Southwest) was incorporated in 1956 under the laws of the State of Texas. It maintains its principal place of business in Lufkin, Texas, and printing operations at that plant were commenced in 1958. [P-138, pars. 19, 20]

B. Dixie Color Printing Corporation (hereinafter referred to as Dixie) was incorporated in 1957 under the laws of the State of Alabama. It maintains its principal place of business in Sylacauga, Alabama, and printing operations at its plant were commenced in 1963. [P-138, pars. 21; Tr.-920]

The International Color Printing Company

17. International in 1955 was a corporation organized and existing under the laws of the State of Pennsylvania, with its principal place of business in Wilkes-Barre, Pennsylvania. It then had facilities for the printing supplements at Wilkes-Barre, Pennsylvania, and Peoria, Illinois. [P-138, pars. 7, 8]

18. International's annual gross receipts in 1954 for the sale and printing of supplements were approximately \$8,483,000. [P-138, par. 15]

A. International had commenced the printing of such supplements in 1924 at Wilkes-Barre, Pennsylvania. It commenced such printing with a loan of \$50,000 by its principal stockholder. That loan was repaid during the years 1928-1929. It also made another loan of \$35,000 which was repaid to the daughter of the original stockholder and stockholder in 1955 when International's stock was purchased by Greater Buffalo Press. [Tr.-1281; 1297]

19. International, unlike Greater Buffalo, did not in 1955 solicit directly and sell supplements to the newspapers for which it printed. Instead it printed such supplements

3431 exclusively for the newspaper customers of King Features Syndicate, a division of The Hearst Corporation (hereafter referred to as King).

A. International was obligated to print exclusively for King's newspaper customers during the period from 1925 to 1955, under a continuous series of written contracts between International and King.

1. The first such written contract was entered into in about 1927. Subsequent contracts provided that King had to place at least 75 per cent of its printing with International in return for an obligation for International to print exclusively for King's customers. The foregoing contractual modification was made, since transportation costs precluded the shipment of supplements from International's plants to the West Coast. [Tr.-1285-86; P-1, p. 1]

B. International did not maintain a sales force from 1927 to 1955, nor did any of its officers and employees actively solicit and obtain newspaper accounts, because it printed exclusively for King's newspaper customers. [Tr.-1284-85]

Newspaper Enterprise Association, Inc.

20. Newspaper Enterprise Association, Inc. (hereafter referred to as NEA) in 1955 was a corporation organized and existing under the laws of the State of Delaware, and was a subsidiary of The E. W. Scripps Company which, among other enterprises, managed a newspaper chain. NEA maintained its principal place of business in Cleveland, Ohio. [P-138, par. 22; Tr.-1754]

21. In 1955 and prior thereto the business entity NEA, or NEA Service, Inc., as it was then known, was not a printer of supplements, but did engage in supplement printing through its subsidiary Buffalo Colorpress, Inc. Such subsidiary 3432 printed supplements for many NEA supplement customers. Other comic printers printed for the remaining NEA supplement customers, pursuant to arrangements previously made with NEA. [Tr.-1601: 1798-99; P-138, par. 23, 25]

A. Buffalo Colorpress, Inc., in 1955 had a printing plant located in Buffalo, New York. The capital stock of Buffalo Colorpress was owned only by NEA and its parent corporation, The E. W. Scripps Company. [P-138, par. 25; Tr.-1772]

B. Buffalo Colorpress discontinued printing supplements in the latter part of 1955, and the corporation and its facilities were liquidated the following year. [P-138, pars. 24, 25]

22. In addition to selling supplement printing to newspapers through its sales force, NEA also licensed newspapers with feature rights, including the subject matter of comics. NEA characterizes itself as a newspaper feature service organization in that it also makes available through licensing to newspapers, for their weekday editions, all types of copyrighted features, which include cartoons, columnists and other material. However, comics appearing in Sunday supplements are syndicated in that the rights to each such feature are available for sale to newspapers. [P-138, par. 23; Tr.-1588-91; 1596]

23. Newspapers owned or controlled by The E. W. Scripps Company, in 1955 and since, function as independent entities. Accordingly, NEA has competed, and competes with other supplement sellers and feature licensors, for the business of
3433 such newspapers. [Tr.-1769-70]

CO-CONSPIRATOR KING

The Hearst Corporation

24. The Hearst Corporation (hereafter referred to as Hearst) was a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in New York, New York. King Features Syndicate (hereafter referred to as King) was an unincorporated division of Hearst. [P-138, par. 17]

25. King, in 1955 and prior thereto, sold supplement printing to newspapers. In addition, King licensed Feature Rights to newspapers, including the subject matter, which appeared in supplements. King did not print the comic color supplements it sold to newspapers, but made arrangements to have such supplements printed for its newspaper customers. [P-138, par. 12]

26. Hearst was a named defendant in the original complaint as filed herein. However, on August 31, 1965 this Court entered a decree, with the consent of Hearst and the plaintiff. The decree prohibits Hearst from engaging in certain licensing practices. It also compelled Hearst to separately list its fee for licensing comic features and the price for the printing of the supplements, if, as and when a plant for printing purposes is

divested pursuant to a final judgment in this action. Greater Buffalo and NEA did not make formal objection to any part of the decree prior to its entry, although given an opportunity to do so. [Final Judgment, Aug. 31, 1965 IV (C)]

Trade Practices

27. Among the singular trade practices in the business of selling and printing supplements are the following:

A. Comic printers charge supplement sellers less than newspapers for supplement printing. Syndicates and other non-printer sellers realize their profit from the difference between the amount they pay printers and the remuneration received from their newspaper customers.

1. International, which printed exclusively for King's customers prior to 1955, charged King a flat rate for all supplement printing up to a given volume. Such charges applied irrespective of extra costs incurred for plate changes and other expenses. King, in turn, entered into written contracts with its customers for periods varying from 1 to 5 years at higher prices than it paid International. King's profits represented the difference in the amounts it paid to International and the monies received from its newspaper customers. [Tr.-1286; P-138, par. 13]

2. Greater Buffalo charged uniform prices to newspapers for the various types of supplement printing. Since 1955, pursuant to written agreement, Greater Buffalo gives NEA a commission, or so-called royalty, from such published prices on printing placed in its printing plants by NEA. [P-27; P-28]

B. Implicit in the relationship between comic printers and supplement sellers is the understanding that the newspaper customers of such supplement sellers will not be solicited for supplement printing business by the comic printer which is then printing supplements for that newspaper under orders from such supplement seller. [Tr.-1763-64; 1767-68]

C. Comic printers convert antiquated presses which are obsolete for black and white printing. Successful operations are determined by the comic printer's resourcefulness and ability to assemble and improve such antiquated equipment. [Proceedings, October 25, 1961, pp. 35-50]

D. Greater Buffalo achieved success by 1955, because of its ability to print for large newspapers at low cost. It accomplished this because it possessed the following talents upon which comic printers depended for success: (a) resourcefulness in purchasing presses and equipment for which it had no immediate need but which it foresaw might be converted into useful equipment; storing such equipment until a need developed and then by improvising and augmenting it with additional attachments, converting, at a minimum cost, the equivalent of four black and white presses into machines capable of printing all colors contained in supplements; (b) skill in developing flexibility (the ability to print a number of different size sections) and in lowering costs for plate changes, alignments, and other makeready charges. [Tr.-792; 801; 908-09; 1103-04; 1261; 1289-90]

On the other hand, International achieved success by 1955 because of its ability to print for small newspapers at low cost. This fact was of great concern to NEA which did not have the use of International's printing facilities, since the latter printed exclusively for King. [Tr.-1618-19]

Section 7, Clayton Act

28. By 1955, and prior thereto, Greater Buffalo competed in the printing and sale of supplements with International and King as a single economic unit. International printed supplements exclusively for King which were sold to newspapers in competition with supplements printed and sold by Greater Buffalo. [P-1, p. 1]

29. By 1955, Greater Buffalo and International each printed about 37 per cent of the supplements printed for newspapers by significant supplement printers. In that year, each also accounted for more than 5 times the volume of printing done by any one of the other significant supplement printers. [P-62]

30. By 1955, Greater Buffalo made plans to erect a printing plant in Lufkin, Texas, to service customers in the South. To implement these plans, it entered into a newsprint contract with a paper mill in Lufkin, Texas, so as to ensure a continuous supply of newsprint which is the most expensive material for supplement printing. [Tr.-803-05; 813]

31. By 1955, International and King had initiated and developed definite plans for the opening of a printing plant in

Sylacauga, Alabama, so as to service customers in the South. Such plans contemplated competition with Greater Buffalo's proposed Lufkin printing plant.

A. International had investigated the Coosa Pines and Sylacauga area of Alabama, selected a site for a proposed plant in Sylacauga, Alabama, and obtained a written commitment for a continuous supply of newsprint from a paper mill in Coosa Pines. [P-53; P-56; P-57; P-108; P-109; P-111]

3437 1. In 1954, International's President, Joseph J. Gorman, made at least two trips to the Sylacauga area of Alabama in which he called upon the Coosa River Newsprint Company and investigated living conditions in the area. [P-53; P-108; P-109]

2. International's Board of Directors was informed, after Mr. Gorman's second visit to the Sylacauga area, that King would give its Southern business to International's "competitors" unless a Southern plant was established by International. Accordingly, it directed its President to:

- a. Negotiate a long-term written contract with King which would provide the revenue for the proposed printing plant;
- b. Negotiate a loan to defray the cost of a Southern plant after determining what costs would be entailed; and
- c. Advise the Coosa River Newsprint Company that it was desirous of obtaining a contract for the purchase of newsprint and having a building erected for its proposed printing plant. [P-54]

3. At the beginning of 1955, three key personnel of International made an extensive trip through the Southeast which included the Atlanta, Georgia, and Sylacauga, Alabama, areas. Such personnel were able to determine the type of building needed for International's requirements and the cost for the same.

3438 a. The International personnel met with builders, contractors, newspaper executives and gathered information as to the costs involved in the proposed project. In addition, they gathered cost data through information obtained as to the availability of skilled labor under the general wage scale.

b. The International personnel also recommended the acceptance of a site, which the people of Sylacauga offered, after examining other possible locations and entering into discussions with city and business leaders. [P-111]

4. A newsprint contract for a term of 10 years was entered between The Hearst Corporation, on behalf of King, and the Coosa River Newsprint Company whereby a commitment was made to deliver newsprint to a plant, "International would build in the Coosa Pines area" [such area included Sylacauga]. [P-50; P-57]

a. International decided that such a contract was a prerequisite for its undertaking any Southern operation, since Joseph J. Gorman, International's president, had been informed that Coosa River Newsprint Company officials were going to urge other supplement printers to locate in the area. Mr. Gorman believed that a written commitment was necessary to insure a continued supply of newsprint. [P-53, p. 2; P-110;

Proceedings, October 25, 1961, pp. 64, 66]

3430 5. On June 16, 1955, approximately two weeks prior to the sale of International to Greater Buffalo, International and King agreed upon printing charges which King thereafter paid and were incorporated in a long-term written contract. Such negotiations had commenced in 1954 between International's president and King's sales manager. [P-23]

6. By June 3, 1955, some three weeks before the International sale was consummated, International had selected a site in Sylacauga for its proposed plant and had advised the Sylacauga Chamber of Commerce that the citizens of Sylacauga should proceed to purchase the property which would be donated to International.

a. On June 3, 1955, International's President wrote to the Sylacauga Chamber of Commerce and stated that, "you should purchase the land." As to the grading of the land, which was contemplated to be part of the gift to International, he also wrote in part that, "as per our telegram of this date, please proceed with the grading in accordance with our understanding." [P-114]

7. International, in 1955, made mechanical alterations in its physical equipment at its plants in Wilkes-Barre, Pennsylvania, for the purpose of commencing printing operations in Sylacauga in 1956.

3440 a. In April 1955, International's president reported what was being done along the mechanical lines in Wilkes-Barre and how he contemplated utilizing presses in Wilkes-Barre for commencing printing operations in the South.

in 1956. The written contract with the Coosa River Newsprint Company provided for the delivery of newsprint to International at that time.

b. Work had progressed in moving presses, readying stereotype equipment in the two plants at Wilkes-Barre. Upon the completion of the same, before the end of 1955, International's president contemplated moving three single-width presses to the South.

c. Plans and specifications were drawn for a building of about 30,000 square feet, as against a much larger building Greater Buffalo was planning to erect at its proposed plant in Lufkin, Texas. [P-122]

32. Greater Buffalo, on June 25, 1955, purchased, for \$575,000, the outstanding stock of International, and through such purchase eliminated competition between its proposed Lufkin plant and International's proposed Sylacauga plant and increased its market position in supplement printing from approximately 37 to about 75 per cent. [P-138, par. 16; P-62]

A. Following Greater Buffalo's purchase of International's stock, officers of Greater Buffalo constituted a majority of International's Board of Directors, and of International's four officers, two were thereafter also officers of Greater Buffalo Press. [P-127; P-138, par. 17]

3441 B. Greater Buffalo in purchasing International's capital stock contemporaneously provided for International to retain its supplement printing business which yielded annual receipts of \$8,000,000.

1. About a week before International's stock was acquired by Greater Buffalo, King and International agreed upon the prices which were to be incorporated into a ten-year contract to replace their existing contract which was then terminable upon six months' notice. Such ten-year contract was made on July 30, 1958. Pursuant to the contract, International was to continue printing exclusively for King's newspaper customers. The contract followed prior contracts between the parties in that it provided that as long as King places at least 75 percent of its supplement printing business with International then International must print exclusively for King. [P-23]

2. On April 22, 1958, the foregoing agreement between International and King was modified to provide that any printing done by Greater Buffalo, at any of its printing plants, shall be

counted toward the printing business which King was obligated to give to International. [P.-60]

34. At the time International's stock was sold to Greater Buffalo, International was not a failing corporation nor faced with bankruptcy by reason of its failure to meet existing obligations.

A. International, in 1955 the year of its sale, paid dividends to its outgoing stockholders for its six-months' period 3442 which amounted to \$17,400. It had consistently paid such dividends during the previous five years. In 1954, for the entire year, such dividends amounted to \$34,800, and in 1953 the dividends paid to International's stockholders were \$44,700. [P-141]

B. From its inception, International's stockholders had made no capital investment in the corporation. Any loans which they had made to finance the operations, in lieu of operating capital, had been repaid. At the time of the International sale, neither of the two stockholders contributed to the management of the business. [Tr. 1296-97] The business was then run by Joseph Gorman who received an annual salary of \$39,193.77 in 1951. [Tr. -1549] Accordingly, the dividends represented cash distributions to persons who incurred no investment risks after all corporate expenses and taxes had been paid.

C. International's net profit after depreciation and taxes in 1955, the year of its sale to Greater Buffalo, was \$88,300. [P-141] No basic improvements were completed until 1957, or 1958, when preregistry was developed. [Proceedings, October 25, p. 25] In 1954, that profit amounted to \$11,146, and during the previous four years such profits exceeded \$70,000 for any given year. [P-141]

D. International, prior to its sale to Greater Buffalo, was not a vigorous or aggressive company. Its stockholders were absentee owners who, as non-participants in the corporation's operations, were interested in receiving dividends and not re-investing such sums in the company. [Tr.-1296-97]

3443 35. Following Greater Buffalo's purchase of International, on June 25, 1955, Greater Buffalo utilized substantial assets of International, including use of equipment, machinery, manpower, and funds for the acquisition of land, construction of building and plant facilities, and general preparation of a printing plant at Sylacauga, Alabama, at the site

selected by International prior to Greater Buffalo's acquisition of its stock. Greater Buffalo also transferred from International most of the printing which comprised the Sylacauga plant's initial operations.

A. Immediately following International's sale, International, which retained its corporate and business entity, uninterruptedly continued to carry on its negotiations with community leaders of the city of Sylacauga.

1. International requested the people with whom it had been dealing with in Sylacauga to sell bonds so as to give it a satisfactory building, and International contemplated leasing such a building for its proposed plant. [P-115]

2. Shortly after the International sale, International's president authorized King's sales manager to contact newspapers which might be involved and state that King is "the selling agent for International Color and that when a Southern plant is finally established, all sales for work produced by International Color Printing Company will be in the hands of King Features Syndicate." He also stated that while a Sylacauga plant had been agreed upon, it would proceed when final financial and building plans were made. [P-115]

B. As a result of negotiations between International and Sylacauga executives, graded land was deeded gratuitously to Greater Buffalo. The sum for the purchase of such 3444 land was obtained through the sale of bonds by Sylacauga citizens.

1. Citizens of Sylacauga, as a result of negotiations with International's officers, agreed to make a gift of certain land to International. Upon International's request such land was instead deeded to Greater Buffalo. International had initially requested that, "The Greater Buffalo Press will own the land and the building and will lease the same to its wholly owned subsidiary, The International Color Printing Company, for the operation of the printing business which would be in the name of The International Color Printing Company." [P-115; P-124]

a. Sylacauga citizens, through their Industrial Development Board, raised through contributions money which was to be used for purchasing and grading the donated land.

b. Immediately prior to the granting of the deed, approximately \$16,000 to \$18,000 of the required \$42,000 had to be raised for grading the land to be donated. Accordingly, the

mayor of Sylacauga and the Secretary of the Chamber of Commerce requested that a prepared letter be sent to them by International indicating that it would accept the land and thereafter build a printing plant. The purpose of the letter was to aid in soliciting the final money needed for Sylacauga 3445 to donate the land. It was decided that a supplemental letter would have to be sent indicating that the land should be deeded to Greater Buffalo, and that International would operate the plant, since it would only complicate matters to request that the land be deeded to Greater Buffalo. [P-118; P-118A]

C. International purchased Press #2022 from a newspaper of The Hearst Corporation located in Baltimore, Maryland. This was the press with which printing operations were commenced at the Sylacauga plant, and the most expensive piece of equipment.

1. International advanced the sum of \$32,500 for the press and thereafter the additional cost of shipment. At least three to five International personnel were involved in going to Baltimore for inspecting, dismantling and eventual housing of the press at International's Wilkes-Barre plant. [Proceedings, October 25, 1961, pp. 33, 73, 138]

D. The Hearst Corporation, on behalf of International, modified by written agreement the 1954 newsprint contract with the Coosa River Newsprint Company. The modification extended the termination of the original contract for four more years. The contract as thus modified was to terminate in 1969. [P-107; P-121]

E. During the three years Press #2022 was housed at the Wilkes-Barre plant, International supervised and implemented with its skilled personnel Greater Buffalo's design and plans for its improvement. [Proceedings, October 25, 1961, pp. 74, 81, 83-4] The press when completed was described by International's president as second to none in the country for supplement printing. [Deposition, Joseph J. Gorman, 1961, p. 26]

1. International personnel were utilized, and materials belonging to and purchased by International were used in improving the press. [Deposition, Joseph J. Gorman, 1961, p. 30; Proceedings, October 25, 1961, pp. 81-83]

3446 2. At periodic intervals, International recorded its progress to Greater Buffalo in building the press. Thus

on July 2, 1957, a report was given when one folder was completed and reels had been rebuilt. Another such written report was given in February 1960 when International's president reported that he expected to have the press in Alabama "ready for erection about the middle of May." [P-119; P-128]

F. International expended approximately \$243,000 for equipment, which included the press, and other costs relating to the Sylacauga plant. During such period of time, all or substantial parts of such sum, were outstanding advances prior to the reimbursement of International of almost all that sum after the commencement of this action. [Deposition, Joseph J. Gorman, 1961, p. 44; Proceedings, October 25, 1961, pp. 76, 78; Deposition, William Hammond, 1961, pp. 181, 185]

G. Six skilled workmen of International spent one year in Sylacauga. The majority of such workmen had worked on Press #2022 in Wilkes-Barre and most of their time in Sylacauga was allotted to erecting the press which had been dismantled for shipment to the proposed plant. [Deposition, Joseph J. Gorman, *supra.*, pp. 74-8; Proceedings, October 26, 1961, p. 299]

H. Such International employees while in Sylacauga were under the supervision of Joseph Clinton, an employee of International, who supervised the operations of erecting and preparing the plant for printing operations. Joseph Clinton later left International's employ and is presently the general manager of the Sylacauga plant. [Deposition, Joseph J. Gorman, *supra.*, pp. 78, 79]

3447 I. International advanced the money and purchased office furniture and other incidentals in initially equipping the plant.

J. Machinery which was the property of International was used for the installation of printing equipment at the Sylacauga plant. Such equipment which included lathes and grinders were returned to International in October 1961. [P-132]

K. When Dixie Color Printing Corporation, the wholly-owned subsidiary of Great Buffalo and now owner of the Sylacauga plant, was incorporated in 1957, Joseph J. Gorman, International's president, and Joseph Clinton, then an International employee, became respectively President and Assistant Secretary of Dixie Color Printing Corporation. [P-127]

Section 2, Sherman Act

36. At the time Greater Buffalo acquired International's stock, Greater Buffalo and King were competitors in the sale of supplement printing to newspapers. At the time of this acquisition, June 25, 1955, they were engaged in a conspiracy for Greater Buffalo to monopolize the printing of supplements and for King and Greater Buffalo to share in monopolizing the sale of such supplements to newspapers.

37. Greater Buffalo's purchase of International's stock on June 25, 1955 was accomplished pursuant to the aforementioned conspiracy with King.

A. King and Greater Buffalo had reached an understanding on or about June 13, 1955 that: [P-15; P-16]

1. Greater Buffalo would purchase International's stock;

2. King would enter into a long term contract with International;

3. The supplement printing which King would sell would be printed only by International or at the Greater Buffalo plant to be opened in Lufkin, Texas;

3448 4. Greater Buffalo would print only for King and for no other supplement seller; and

5. Greater Buffalo would print only for its existing accounts and would not solicit new accounts in competition with King.

38. The conspiracy in which Greater Buffalo and King were engaged, in June 25, 1955, began in or about 1954 when Greater Buffalo and King agreed not to compete for three newspaper accounts. [Tr. 232; 234; 235-6; P-13; P-70] Subsequently, King agreed to assist Greater Buffalo in opening the Lufkin plant by transferring all of its Texas runs to the plant. [Tr. 240; 242] Without such assurance Greater Buffalo would not have opened its Lufkin plant when it did. In turn Greater Buffalo agreed that King would receive 50¢ prM on whatever business Greater Buffalo would have already obtained upon the plant's opening. [Tr. 242; P-13]

39. The conspiracy which existed between King and Greater Buffalo to allocate customers, and to assist in the opening of the Lufkin plant, led to King and Greater Buffalo's agreement that Greater Buffalo would acquire International's stock.

A. At the period immediately prior to June 25, 1955, Greater Buffalo and King, through International, were the foremost

ellers of comics printed by comic printers. The managerial decisions in running each company were made by Frank J. Nicht of King and Walter Koessler of Greater Buffalo. Both sought to further the interest of their respective concerns. King's success in its sales of supplement printing was its sales organization and the entree its salesmen had to newspapers which were purchasing its syndicated features. King's copyrighted comic features were in great demand. Greater Buffalo, on the other hand, operated its plants more efficiently than any other comic printer, and was therefore able to offer lower prices to larger newspapers.

NEA Joinder and Participation

40. In or about October 1955, NEA joined the conspiracy between Greater Buffalo and King for Greater Buffalo to monopolize the printing and for the sharing in the monopolizing of the sale of supplement printing. NEA's joinder of the conspiracy resulted from Greater Buffalo's acquisition of International's stock. It was this event which compelled NEA to decide to sell its printing plant to Greater Buffalo, and arrange for Greater Buffalo to do the printing which was then being done by Greater Buffalo Color Press. This further increased Greater Buffalo's percentage of the supplement printing done by comic printers. [P-62]

41. When NEA learned that Greater Buffalo had purchased International it sought from Greater Buffalo the same printing prices that King was enjoying. It expressed to Greater Buffalo its concern over its inability to compete with King in the sales of readyprint. Greater Buffalo professed an inability to accomplish this and Greater Buffalo arranged a meeting between NEA and King for the express purpose of NEA and King entering into a no-compete agreement.

A. Although NEA had been discussing with Greater Buffalo the purchase of its subsidiary's printing plant, negotiations became more detailed and terminated only after NEA learned that Greater Buffalo had acquired International. [Tr. 1608-09; 1787]

B. In or about October 1955 it consummated the sale to Greater Buffalo and agreed that Greater Buffalo would print for NEA runs formerly printed at Buffalo Color Press. [P-27]

C. Implicit in this arrangement was the understanding that Greater Buffalo would not compete for these runs, but would pay NEA a sales commission. [Tr. 1763-64; 1777-79]

D. Greater Buffalo and NEA agreed that they would determine between themselves which new accounts would be allocated to either. [P-32; P-33]

E. At the same time NEA complained to Greater Buffalo that it could not effectively compete with King now that

Greater Buffalo had acquired International. It requested 3450 Greater Buffalo to afford it the same prices that King was enjoying at International. In response Greater Buffalo advised that it could not change King's prices, and could not reduce NEA's prices, and told NEA that it would speak to King about this. [Tr. 1701-07; 1710-12]

F. Thereafter, Walter Koessler, President of Greater Buffalo, arranged for a meeting between King and NEA at the Beverly Hotel in New York City. [Tr. 338; 1710-12] At the meeting attended by Koessler, King and NEA agreed not to compete for or solicit each other's existing newspaper accounts. [Tr. 342; 1709]

42. Pursuant to the King and NEA no-compete agreement, NEA did not compete with King for the following newspaper accounts on the following dates:

1. The newspaper in Tupelo, Mississippi on January 11, 1956; [P-37]

2. On or about January 19, 1956 General Newspapers, Inc. Atlanta, Georgia; [P-36]

3. Jackson Mississippi State Times, March 21, 1957. [P-38; 39]

43. As a result of the foregoing conspiracy, among Greater Buffalo, King and NEA, for Greater Buffalo to monopolize the printing of supplements, Greater Buffalo was assured sufficient runs to justify the opening of its Lufkin plant in 1958 and of its wholly-owned subsidiary in Sylacauga, Alabama in 1963.

A. Having control of the printing for NEA and King by reason of the aforesaid conspiracy, Greater Buffalo was able to close International's Peoria, Illinois plant and transfer the printing to Lufkin. [P-59; P-137, par. 3; Deposition, Joseph J. Gorman, 1961, pp. 118-19]

3451 44. As long as the printing of supplements by Greater Buffalo is sold by Greater Buffalo directly to newspapers, and concurrently through syndicates and service organizations, competition between Greater Buffalo and such supplement sellers will necessarily be restricted.

A. Implicit in the relationship between Greater Buffalo and any of its non-printing supplement sellers is the understanding that Greater Buffalo will not solicit the supplement business of the newspaper for which it is printing pursuant to orders placed with it by the supplement sellers.

1. NEA would not place orders with any supplement printer unless it had faith that the supplement printer would not attempt to sell that account directly. [Tr. 1763-5]

2. By advising NEA that it wished to agree upon those new accounts which it intended to solicit directly, Greater Buffalo acknowledged that it was not considered a fair business practice for a printer to solicit business in competition with its supplement seller. [P-32; P-34]

3452 3. By forwarding to King a copy of a letter to a newspaper, then being serviced by King, that Greater Buffalo could not service its account directly, Great Buffalo acknowledged that it was not in active competition with King. Active competitors do not keep each other informed that they are unable to handle an account on any given occasion. [P-64; Tr. 988-90]

B. Greater Buffalo has the power to make it appear that competition exists between it and its supplement sellers while maintaining the sole power to decide whether to permit competition for any given account, restrict such competition or eliminate it.

1. On some occasions when King and NEA were in competition for particular accounts, Greater Buffalo determined which of the two would get the account by regulating the prices to be charged. [P-34; P-42; Tr. 1168]

C. So long as King and NEA have virtually all of their comic printing done at plants of Greater Buffalo or its subsidiaries (except printing done for West Coast newspapers), Greater Buffalo has an interest in maintaining the same price level at all its plants so as to avoid opposition by King or NEA to price increases or pressure by either of them for reduction in printing prices. [P-135; P-136]

1. King and NEA had virtually all of their printing performed at plants of Greater Buffalo or its subsidiaries [except printing done for West Coast newspapers]. [Tr.-1118; 3453 1798-99]

2. NEA constantly complained to Greater Buffalo about the prices it was paying Greater Buffalo for printing on the ground that it could not effectively compete with King which was enjoying lower prices from Greater Buffalo's subsidiary International. [Tr.-1656; 1698; 1702]

45. The divestiture of Wilkes-Barre and Sylacauga plants would be appropriate relief because such plants were acquired only because of Greater Buffalo's anticompetitive agreements with King.

46. The divestiture of the Lufkin plant is appropriate relief because Greater Buffalo was able to begin its operation only because of its anticompetitive agreement with King and NEA, and was able to commence successfully initial operations because of its ability to transfer to it runs from the acquired plants of International.

Section 3 Clayton Act

47. NEA, since at least 1954 and prior thereto, sold supplements to newspapers.

A. NEA as well as its main competitor, made arrangements to print such supplements with copyrighted features and concentrated in selling such readyprints.

1. Readyprints are supplements used by one or more newspapers in which the contents are the same, or almost identical, but for the mastheads or names of particular newspapers.

2. Comic printers in printing readyprints are able to spread the cost of makeready, or setting up the sections for printing among two or more newspapers. [Tr.-1593]

48. NEA, in 1954 and prior thereto, was a newspaper feature service or service organization, and as such made available to newspapers the rights for various features, including comics, which appear in the daily editions of newspapers. The number of such features made available varied with the type of service purchased. Thus the "Full Service" offered the maximum amount of features, while the

"Intermediate Service" made available a lesser number, and the "Pony Service" offered the minimum amount. [Tr. 1589, 1616]

49. NEA also sold or syndicated to newspapers, and offered to sell the rights for single or more copyrighted comic features which appeared in supplements. [Tr. 1799-1800]

50. NEA, since at least 1954, sold or offered to license copyrighted features, including comics, which appear in either the color supplements, or in the daily editions, of newspapers at lower prices or at no cost when such newspaper customers contemporaneously placed orders with NEA for the supplements.

A. Particular instances in which NEA offered such comic features at lower prices, or at no cost, were:

1. In or about August 1955, a newspaper located in Gary, Indiana, was offered supplements containing seven comic features. NEA, in making the foregoing offer, informed the newspaper that the licensing of the seven comic features, if purchased separately without the printing, would cost the newspaper \$40 per week. However, NEA, priced the supplement printing and comic feature rights as a combined single quotation. It indicated in its internal memorandum that the quoted price was based upon a charge of \$27.50 for the comic feature rights. [P-149; P-150; P-151; Tr. 1876-79]

2. NEA offered in or about December 1956, a newspaper in Albuquerque, New Mexico, one to three comic features at no cost, or extra charge, if such newspaper placed an order with NEA for printed supplements. [P-144; P-145; P-146; Tr. 1840-1842]

3455 3. In or about March 1957, NEA offered to sell supplements to a newspaper in Bend, Oregon, and offered to make available at no extra cost two comic features for inclusion in its daily publications. The newspaper had been using NEA's "Full Service," and such service made the two features available for its black and white editions. The newspaper had switched to NEA's "Intermediate Service" which did not make such comic features available. In the event the newspaper did not place an order for supplements licensing; such additional comic features for its daily editions were to cost \$5 per week. [P-152; P-153; Tr. 1893-97]

B. NEA obtained and sold supplements to newspapers, and

in soliciting such newspapers and thereafter made available comic features at no cost.

1. In or about September 1954, NEA contracted to do the supplement printing for a newspaper in Ponca City, Oklahoma. In contracting for such printing, NEA made available one comic feature at no extra cost. [P-154; Tr. 1898-1900]

2. In or about September 1958, NEA offered to reduce the charge for printing a supplement for a newspaper in Wenatchee, Washington, by \$27 per week. Such reduction in price was to permit the newspaper to purchase NEA's so-called "Intermediate Service" at \$27 per week. Thus, the newspaper, for the same price it had to pay for the supplement printing, obtained as a bonus NEA's "Intermediate Service." This gave it the right to use some comic features in its daily editions. [P-149; P-150; P-151; Tr. 1876-79]

3456 *Ultimate Facts, Section 7, Clayton Act*

51. Greater Buffalo's acquisition of all of the capital stock of International substantially lessened competition between Greater Buffalo on the one hand and the combination of International and King on the other, in the printing and sale of color comic supplements for newspapers which themselves did not print such supplements.

52. Greater Buffalo's acquisition of all of the capital stock of International substantially lessened competition between Greater Buffalo and King in the sale of printed color comic supplements to newspapers which themselves did not print such supplements.

53. Greater Buffalo's acquisition of all of the capital stock of International substantially lessened competition between Greater Buffalo and International in the printing of color comic supplements for newspapers which themselves did not print such supplements.

3457 PLAINTIFF'S PROPOSED CONCLUSIONS OF LAW

1. The printing and sale of color comic supplements to newspapers is a line of commerce and a part of interstate commerce within the meaning of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1, 2) and of Sections 3 and 7 of the Clayton Act (15 U.S.C. §§ 14, 18).

2. Defendants engaged in commerce within the meaning of

Sections 1 and 2 of the Sherman Act and Sections 3 and 7 of the Clayton Act.

3. This Court has jurisdiction to determine whether the acquisition of International by Greater Buffalo violated Section 7 of the Clayton Act, and whether Greater Buffalo, Hearst and NEA violated Sections 1 and 2 of the Sherman Act.

4. Section 7 of the Clayton Act prohibited Greater Buffalo from acquiring all of the capital stock of International on June 25, 1955, for in the printing and sale of comic supplements for newspapers throughout the United States, which did not themselves print such supplements, the effect of such acquisition may have been substantially to lessen competition, or to tend to create a monopoly.

5. "The failing company doctrine" is ~~not~~ applicable to this case and did not relieve Greater Buffalo from the aforesaid prohibition against acquiring all of International's capital stock.

6. In violation of Sections 1 and 2, of the Sherman Act, on or about June 13, 1955, Greater Buffalo and King were engaged in a conspiracy for Greater Buffalo to monopolize the printing of color comic supplements for newspapers, which themselves did not print such supplements, and for Greater Buffalo and King to monopolize the sale of such supplement printing.

7. NEA joined the aforesaid conspiracy in the Fall of 1955 when it agreed not to compete with King, after having agreed not to compete with Greater Buffalo in the sale of supplements to newspapers throughout the United States. Thereafter, Greater Buffalo, King and NEA have been engaged in a conspiracy to monopolize, for Greater Buffalo, the printing of color comic supplements and the sale of said printing services through the sales organizations of Greater Buffalo, King and NEA.

3458 8. Greater Buffalo and King, beginning in or about January 1954, were engaged in a combination and conspiracy to refrain from soliciting color comic supplement business from each other's customers in violation of Section 1 of the Sherman Act. NEA joined such combination and conspiracy in or about November 1955.

9. NEA since 1954, has sold copyrighted comic features to newspapers at discounts, rebates, reduced prices, or at no charge on the condition, agreement, or understanding that such newspaper purchasers would not deal in the color comic printing supplements offered or sold by any competitor in violation of Section 3 of the Clayton Act.

[Caption Omitted in Printing]

Proceedings held in the above entitled action before
3459 the HON. JOHN O. HENDERSON, United States District Judge for the Western District of New York at Buffalo, New York, on December 17, 1969.

Appearances: LEWIS BERNSTEIN, ESQ., and ELLIOTT H. FELDMAN, ESQ., Anti-Trust Division, Department of Justice, appearing on behalf of the Government.

FRANK G. RAICHLE, ESQ., appearing on behalf of the defendant Greater Buffalo Press, Inc.

RICHARD F. STEVENS, ESQ., and SARGEANT KARCH, ESQ., appearing on behalf of the defendant Newspaper Enterprise Association, Inc.

3460 PROCEEDINGS OF DECEMBER 17, 1969, COMMENCING AT TEN A.M.

The COURT: Excuse me for being late. I had a visitor from Washington, in addition to our other visitors, that I had to see for a few moments. I hope you will excuse me for holding you up. I am ready to hear this.

Mr. BERNSTEIN: Good morning, Judge Henderson. At the outset I thought I would like to summarize the argument that the Government is going to present here. At first we will discuss the position that Section 7 of the Clayton Act prohibited Greater Buffalo from acquiring the stock of International. Then we will discuss the legal position that because Greater Buffalo was prohibited from making this acquisition, divestiture of the Wilkes Barre plant and the Sylacauga plant are the only appropriate relief for that kind of violation. Mr. Feldman will present those points to your Honor, and I will then present the reason why and the basis for the Government's demand for the
divestiture of the Lufkin plant, contending that the
3461 opening of the Lufkin plant was made possible by the illegal conspiracy between Greater Buffalo and King Features, and as part of that conspiracy the acquisition of International was involved.

The COURT: Let me ask you this. Now, you have talked about the Wilkes Barre plant, Sylacauga, and Lufkin. It is your position that all three of those they should be required to divest

themselves of, do you take the serious position that they should be back alone on lower Main Street as of now?

Mr. BERNSTEIN: No. That is why the next point I was going to discuss was that this is an equity suit, this is an equity action. The Court has the equity power to take into consideration the fact that fifteen years have gone by since these actions. Greater Buffalo has invested great amounts of money in improving the Wilkes Barre plant and in opening the Sylacauga plant, and in improving the Lufkin plant. Therefore, in order to do equity in this situation, the Government suggests to the Court that this Court has the power to order divestiture in a way that will do equity and not deprive Greater Buffalo of any of its property of investment, and that specific way—I will go into the details later on as to the way it can be done—I will present a concrete proposal as to how that equity can be done and still the Court can give the Government the divestiture relief it seeks.

The COURT: The way you first stated it it sounded to me like you were planning to go back to status quo, when Koessler was trying to make a better mousetrap, so to speak. That is not exactly what you have in mind?

Mr. BERNSTEIN: Absolutely not, that would be foolish, we move along, we don't go back. Part of the Government's proposal—I have to outline that to explain the next point—would be that the Court appoint a trustee, order divestiture of those three plants only at a current fair market value for those properties in the trustee's determination; if that property is not sold within one year Greater Buffalo retains it, keeps it, keeps on going; but in order to create a market for that property, in order to induce somebody to buy that, the Court will put a prohibition on that at the end of one year's time Greater Buffalo is prohibited from printing for King Features, it can go out and print itself and do its own selling or print for any other syndicate it wants or group of syndicates, but it can't print for King Features. This will create the market. Somebody knows when the properties are for sale there is a customer that is available, Greater Buffalo don't have that customer sewed up, the principal seller of color comics supplements.

I will go into more detail as to some of the prohibitions. Included among the prohibitions would be a restriction that Greater Buffalo need not print for NEA, despite its existing

contract with NEA, or it can elect to print for NEA or any other syndicate, but if it makes that election to print for a syndicate, it can't sell in ostensible competition with them, it can do one or the other, it can sell directly in competition with the syndicate or it can have the syndicate as its sales agent so everybody knows Greater Buffalo is the printer and the syndicate is selling the features, not selling the printing or doing printing, or it can sell to the syndicate as its customer and the syndicate will go out and do the selling of the printing.

This requires the imposition of some restrictions on NEA. The Court would ask why is it equitable or fair, where does the Court have power to impose restrictions on NEA. The answer is that NEA participated in the conspiracy with Greater Buffalo and King, and the conspiracy that we charge between Greater Buffalo and King is that Greater Buffalo was to monopolize the printing, King was to monopolize the selling, and this was enlarged to sharing the monopoly of the selling with NEA, so that the total conspiracy ultimately became the conspiracy charged here, that Greater Buffalo is to be the printer and King and NEA are to monopolize the sale of the printing.

Then after we discuss those points, we will discuss that the defenses that have been raised in this case have no merit. It would be clearly erroneous, even if we accept the position of the defendants, it would be erroneous not to find Section 7 was violated or that Greater Buffalo and King engaged in this conspiracy to monopolize the printing.

The COURT: Let me ask you; you say there was a conspiracy to monopolize two things; the printing by Greater Buffalo, and the sales by King and NEA. Now, in order to make a finding of that kind; what is the greatest thing that you rely on, Nicht's story?

Mr. BERNSTEIN: The greatest thing that we rely on is Mr. Koessler's testimony, Mr. Koessler's letters, supplemented by Nicht's testimony, consistent with Nicht's testimony.

3466 We are relying on Koessler's testimony and Koessler's letters for the evidence of that conspiracy.

The COURT: You don't think Koessler's letters, in your judgment, could be interpreted in any other fashion than an attempt to form a conspiracy?

Mr. BERNSTEIN: That is correct. It is the Government's position that it would be clearly erroneous for this Court to find, when he reads Koessler's letters, plus his testimony, that is, the whole testimony, direct and cross-examination, that there is any other finding that could be made but that there was a conspiracy that Greater Buffalo was to be the exclusive printer, King was to be the exclusive seller.

Now, to be perfectly candid with the Court, the Government doesn't take the position that it is clearly erroneous to find that NEA participated in that conspiracy, then there is a discretionary fact, the Government says the Court may find that, there is substantial, sufficient evidence, there is more 3467 than a preponderance of evidence from which the Court could find that NEA joined in that conspiracy, but we couldn't say it would be clearly erroneous if the Court found otherwise. As to the former, yes.

The COURT: The reason I ask these questions, I knew you were coming, but I have not had the slightest opportunity to review the evidence, and I am calling now on certain recall that I have, particularly of Nicht and, of course, you jogged my memory about a series of letters, and you jog it again with the testimony of Mr. Koessler. But the summary of what you say is that in your judgment the combination of those establish a conspiracy——

Mr. BERNSTEIN: That is correct.

The COURT: ——to create this monopoly?

Mr. BERNSTEIN: That is correct.

The COURT: All right.

Mr. BERNSTEIN: We will then finally discuss the Government's request for an injunction against NEA, the same type of injunction that now exists against King, to prohibit NEA from selling ready print as a single unit unless it lists specifically the prices for the printing and the prices for the 3468 features, so that the newspaper knows that when it is buying a package or single unit price how much it is paying for the printing and how much it is paying for the features, so that NEA can't use its power over copyrighted features to induce the sale of the printing.

The COURT: That restriction that you just described was a consent restriction, was it not, between King and the Government?

Mr. BERNSTEIN: It was.

The COURT: That was when General Brownell was in the picture?

Mr. BERNSTEIN: That is correct.

The COURT: That was not part of the Court's findings, that was a consent matter?

Mr. BERNSTEIN: That is correct.

The COURT: All right.

Mr. BERNSTEIN: So with the Court's permission, Mr. Feldman will present the first two points, that the acquisition is prohibited by Section 7, and that the divestiture of the Wilkes Barre and Sylacauga plants are the only appropriate relief for that violation.

Mr. FELDMAN: May it please the Court; the Government contends that in June 1955 Greater Buffalo purchased all the outstanding stock of International, that that act was prohibited by Section 7 of the Clayton Act, and hence Greater Buffalo was in violation of that act. Now, we say they were in violation of that Act irrespective of any of the conspiracy charges that Mr. Bernstein will subsequently refer to. This prohibition makes only Greater Buffalo guilty of Section 7 of the Clayton Act, and does not involve NEA. We think before we can get into the present structure of Section 7 of the Clayton Act, it might be best to go back to the predecessor act, that is, the act of 1914 and what that was about.

The original Clayton Act, that is the parts we are referring to, was an aftermath of the old Teddy Roosevelt era, where the Government was going after the so-called trusts. After while it developed that many of the trusts were using holding companies. Many of the acts relating to the holding companies were not in themselves violations of Section 2 of the Sherman Act, and so this part of the Clayton Act was passed to arrest and stop those practices before they became what they considered Section 2 of the Sherman Act violations. However, after the Act was passed there was certain deficiencies in the Act as far as its application was concerned.

First of all, the Act only applied to stock. What would happen or what did happen when a corporation acquired the assets of another corporation and didn't acquire the stock? Well.

there were rulings, at least by the Federal Trade Commission, at that time that the Act wasn't applicable in such a situation. Then the next great deficiency that took place was that the Act was deemed only to apply to the so-called horizontal mergers. That is the nomenclature given to a particular type of merger where you have one competitor buying another competitor. There were rulings at that time holding that other

types of mergers were not covered by the Act. For example, let's say that a supplier bought his biggest customer, he is a large, dominant factor in the industry, that wouldn't be covered by the old Clayton Act, at least Section 7. In addition, compounding a lot of the confusion, the Act itself had some words which gave the courts a lot of trouble. They used the word "acquiring", they used the word "acquired", and because of that the courts felt it was very specific in its application to particular situations.

Subsequently, that is, in 1950, the Act was amended to its present language. While it may be an imposition to read the statute to the Court, we can only submit that certain parts of it become very important in the development of the case law, so I will take the liberty of reading those parts now. The Act, as to certain parts, says:

"No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock of another corporation engaged also in commerce where, in any section of the country, the effect of such an acquisition may be substantially to lessen competition or tend to create a monopoly."

After that, I am talking about the 50's, there was a flurry of litigation instigated during the Eisenhower administration. Many of the cases were settled, but in the other cases which were not settled problems developed, and they were practical problems, as far as the trier of the fact was concerned in the trial court. To begin with, you had certain elusive language, for example, "may be substantially to lessen competition or tend to create a monopoly." You had defendants coming into court out of the so-called jungle warfare of industry and they would tell one side of the story. Of course, like all litigants, it was partisan. You had another impediment, as far as the Government was concerned, you had economists testifying

and they tended to be somewhat academic, subject to one fallacy, they never were called upon to meet the payroll in the industry under scrutiny.

3474 Now, in those cases the court was asked to play the part of a King Solomon and decide what "may be substantially to lessen competition or tend to create a monopoly." It is in that background that we have the subsequent cases from the Supreme Court. Now, in reading these cases that came down from the Supreme Court, certain basic questions had to be answered. For example, when we talk about "substantially lessen competition" under the statute, what does the Act refer to in line of competition? Does it mean any type of competition? Does it mean competition resulting from a particular set of circumstances? It is important to do this without using the word "competition" in your definition, otherwise you go around and around in circles.

Then the next question that had to be answered was what type of judicial inquiry would be permitted here, how far can a trier of the facts go? Was he to get involved in details of the industry, and concern himself with potential competition in the industry, concern himself with what the future of the industry might be, and things like that? Then, of course, the question had to be answered, what is meant by the phrase "where in any section of the country," what does that mean? Going to the last matter first, namely, the question about "where in any section of the country," that was disposed of rather quickly. The courts have resolved that it can be any geographic area where the particular economic activities under attack are being carried on. For example, in the Pabst Brewing case the area was confined to three states: Wisconsin, Michigan and Illinois. We submit that in this case here there is no problem, and that is because the geographic area is the entire country. We have evidence adduced here, even the defendants under their own direct examination stated they have sold supplements from the east to west, you have International selling out in the State of Washington, and all parts of the country. So this Court, we submit, need not concern itself with a geographical area.

3475 Now, the next problem that came up, this is in connection with the judicial trier of facts was called upon to make, what type of market are you concerned with

here, namely, what product is involved, how broad is this market going to be that is going to be judicially scrutinized? In this case there could be several types or lines of commerce, as far as the specific market is concerned. You could have, one, all printing throughout the country, and that would include printing done by newspapers themselves, in addition to independent color comic supplement printers. Then you could have printing of supplements just done by color comic printers, and only for newspapers which do not print their own. Then you could have a separate line of commerce consisting of the selling of the supplements, just the selling. We say the most logical type or relevant market area here is the combined printing and selling supplements. We say the printing in such a relevant market would be done by color comic printers. Just
 3476 in passing, I could note the defendants have contended that in such a market those newspapers which print their own supplements would be included.

Now, irrespective of that, as far as Section 7 of the Clayton Act is concerned, the courts have held that one of the purposes of the Act was to arrest certain types of concentration, namely, economic concentration, and by that they mean one corporation taking over another corporation, and since many of the acts prohibited may not involve or reach the magnitude of a monopolization case, in such cases the court may consider what it considers a sub-market, and if a court finds there are peculiar characteristics of a market, such as unique production facilities, distinct customers, or specialized features, then the trier of facts can find that for the purpose of Section 7 of the Clayton Act there is here a sub-market. We maintain there is such a market here, either it be as a sub-market or part of a much larger market. We further submit that the Court need not
 3477 concern itself with the outer products limits of this market, it may be a sub-market or it may be the entire market.

The COURT: Let me ask you something. Basically, I assume, that all these acts had a purpose, and that was to get a product to the public at a fair, competitive price, it never worried about, I think, basically, about a competitor being squeezed a bit, the purpose was to see the public got its requirements at a competitive price, isn't that correct?

Mr. FELDMAN: I would say that would be a very ultimate goal, they were not directly concerned with that.

The COURT: Let me ask you something, trying to jog my memory, was there ever anything in this case brought to my attention of a disappointed consumer of these goods, who brought to my attention that they had been hurt by whatever Greater Buffalo was alleged to have done?

Mr. FELDMAN: No, sir, there was none.

The COURT: Isn't that the key consideration?

Mr. FELDMAN: No, sir, we submit it is not the case
3478 here.

The COURT: Isn't that what the efforts of Teddy Roosevelt were directed at, the consumer?

Mr. FELDMAN: Originally, yes, but here's the problem that happened here, as far as Section 7—now I am talking about Section 7—that Act is only concerned with what is considered competition, nothing more. They were concerned with the economic concentration. In a particular industry you get two or three companies buying up the others and becoming the largest. The Act doesn't attempt to go into what flows thereafter, when you got two or three companies running the show, it presupposes in the long run——

The COURT: You claim they are running the show?

Mr. FELDMAN. I say there is a violation because of Section 7 here, yes.

The COURT: Do you say right now that Greater Buffalo and its acquisition are running the show?

Mr. FELDMAN: I don't know exactly. I would say to a large extent, yes. Yes, I would, they have to by the mere acquisition itself. They have to, that flows. The Act doesn't say that you should have to show that; it may tend. You are talking
3479 about may over here, that is the criteria used. Let me digress and give you one case that happened——

The COURT: Let me ask you right now, you say it may tend to have a monopoly, what can you point out to me that has resulted from the early beginnings of Greater Buffalo, the acquisition of International, the Sylacauga plant and Lufkin, that in your judgment has in effect lessened competition and hurt the consumer?

Mr. FELDMAN: I can't go that far. The Act does not require me to do that. Let's——

The COURT: Isn't that what I should be concerned about?

Mr. FELDMAN: No, sir, not under Section 7, no, sir. Let me—to answer the question, let me at least put up one of the charts used in the early proceedings—

The COURT: This thing hasn't been going on just for a year, it has been going on quite a while. I would be concerned as to who is aching as a result of this alleged violation of law. You say that is not important?

3480 Mr. FELDMAN: Not under a Section 7 violation, we are not concerned with that at all. Before getting into the facts over here, I better—I would like to call your Honor's attention to one case, it may clear it up somewhat.

Your Honor may recall the Dupont case. That was the case where in 1917 to 1919 Dupont went out and bought 23% of the shares of stock of General Motors. General Motors at that time only had 11% of the market. That took place thirty years before a suit was commenced in 1949 by the Government. This is what they call a vertical monopoly, in the sense Dupont was a supplier buying part of the stock, the stock of its customer. At the time Dupont bought the stock they undoubtedly envisioned General Motors might grow, sort of an investment, they also were a supplier—

The COURT: What was the product, what was the unique product?

Mr. FELDMAN: The product here was finishes for automobiles and fabrics. There is a Duco lacquer put on the automobiles—

The COURT: Unique?

3481 Mr. FELDMAN: Unique in the sense—let me say this, Dupont probably had about three point something percent of the whole country—

The COURT: There is nothing unique about Koessler's operation except that he did it well?

Mr. FELDMAN: There is plenty unique about it.

The COURT: What is there about it? He made a better press? I remember there was a lot of talk about overprinting the old funny papers, they used to have Captain Katzenjammer half green and half red, and all Koessler ever did was to get that polished up so it didn't do that, and turn it out twice as fast. He has no patent, has he?

Mr. FELDMAN: No, no patent. Let me say, this is a typical type of color comic supplement known to everyone.

The COURT: Anybody can print that that can get Koessler's skill and a press of his quality.

Mr. FELDMAN: Originally, yes, not now anymore.

The COURT: Why?

Mr. FELDMAN: Because the very nature of production, this was based on old printing presses, and Koessler happened to be very bright——

The COURT: Is he supposed to be penalized for being 3482 bright?

Mr. FELDMAN: No, this is directed to the question of whether this is a specialized type of printing, and it is. For example, here are other types of printing, it is probably an offset type of printing, it is more expensive, it can't compete. It is completely different. It takes a specialized skill to turn this out as a comic printer and go around and sell it to newspapers. In order to sell it to newspapers it means you got to make it cheaper than they could. The whole industry—this is the industry he developed through his skill and know-how. It meant buying presses, these were old Black and White presses—it meant holding onto them a number of years, not too many around at the present time, a lot of them were bought from Hearst. In fact——

The COURT: A lot of them he bought, as I remember it, were old, virtual junkers.

Mr. FELDMAN. Right.

The COURT: Junkers in Wilkes-Barre, and by reason of know-how he made them functional.

Mr. FELDMAN: That is correct.

3483 The COURT: Is that wrong?

Mr. FELDMAN: No, it is 100% right. In addition to that, it takes ingenuity to take an old press and look around for other equipment and use that in conjunction with that and build something out of the thing. These presses are used for color comic supplements——

The COURT: Wait a minute. Today if there is another Koessler in the United States can't he do the same thing?

Mr. FELDMAN: It would be extremely difficult.

The COURT: Because there are not many Koesslers?

Mr. FELDMAN: Yes, sir, number one. Number two, it would be much more difficult. If you look through Editor and Publisher, there are not many old presses around.

The COURT: Can't they make a new press?

Mr. FELDMAN: It is very expensive, that is the whole point. You have——

The COURT: I may be missing something. I probably am.

Mr. FELDMAN: Suppose I go back to the——

The COURT: Maybe I am off the track.

Mr. FELDMAN: I think I would probably answer your question more satisfactorily by explaining what happened in that case. Now, they had——

3484 The COURT: Wait, "that case", you are talking about Dupont?

Mr. FELDMAN: That is correct.

The COURT: Which had a peculiar ability to produce a certain lacquer, isn't that right?

Mr. FELDMAN: No, it was not. They said other people could do the same thing. Just the fact they had this product on the market, they were selling it, that made it unique, it was different. Other people were not in it for some reason or another.

The COURT: I remember those days. That is the time when you got this kind of a finish that you didn't have to simonize and rub wax on, that was the beginning?

Mr. FELDMAN: That is right. Yes, sir, that is right. The point was the other people decided not to go into that, they didn't find it profitable or some other reason. Here was something that took place thirty years before a suit is brought, and I might say this during this time, the court found, at least the Supreme Court found that there was no complaint upon the service and upon the product that was sold to General Motors.

3485 The Court also found there was no instances where discrimination was used against other suppliers in favor of Dupont, none of that was found. The only thing the Court said was because of the interlocking, in some cases, of directorships taking place, on one hand a director of Dupont becoming a director thereafter of General Motors, and also the ownership of stock, because inquiries were made to try to get more of General Motors business that there was an inference during the years Dupont sold many of its products because of its position as a stockholder of General Motors.

The COURT: But Koessler and Greater Buffalo never owned a nickel's worth of King stock——

Mr. FELDMAN: Before the acquisition, no, that is right.

The COURT: Nor NEA?

Mr. FELDMAN: No. The only point I am getting at, your Honor, you had questioned about the consumer.

Mr. RAICHLER: In that connection, it isn't claimed that Koessler or Greater Buffalo ever owned a dollar's worth
3486 of stock in the newspapers, either.

Mr. FELDMAN: That is not an issue.

Mr. RAICHLER: In line with the Judge's observations.

The COURT: Here is what I am talking about; I can see where if you have got an automobile finish, whether you have a patent on it or not, you deal with General Motors, the biggest producer of cars in the country, you own stock in it, and that is the only manufacturer that is going to get your product, that is kind of a tie-in thing. It is like the alleged tie-in in a patent case I have here where a windshield wiper is involved, you tie the arm in and sell it only as a package, then you are in trouble. Now, all Koessler had is a skill. Isn't it like—you have heard of Kittinger here, the furniture people, they make a quality, number one furniture, and I assume in that quality line they have very little competition; and somebody else makes a piece of furniture down south that falls apart in a year when it gets in a hot room; that is an inability to compete with Kittinger because the skill isn't being employed. You are

3487 talking about a product tied in to two corporations, that is this lacquer, a real tie-in, as against a person who has a skill, wants to expand, wants to make his product more available and perhaps cheaper to the consumer, and he does this, and by reason of it, somebody who isn't as skillful is squeezed a bit, let's say. That is why I ask you the question, can you point out a consumer that is hollering?

Mr. FELDMAN: No, sir, there never are any, in Section 7 there never are any consumers hollering, that is not the test of the case. The test is only competition and the elimination of this competition which flows from only one source, economic concentration in any industry or sub-market. The courts have said thereafter the consumer gets protected, it doesn't get involved in that at all, this is only a particular segment of the anti-trust picture.

The COURT: Because it is there does not mean I have to find that from the facts you describe.

Mr. FELDMAN: I am submitting that there is a sub-
3488 market. That is something you don't have to find unless
you find the facts support such a conclusion.

The COURT: Aren't you basically interested here in John Doe,
the consumer?

Mr. FELDMAN: No, sir.

The COURT: You brought this lawsuit; aren't you basically
trying to protect the cost of a newspaper in the hands of John
Doe?

Mr. FELDMAN: Only as a second step. As far as Section 7—

The COURT: I am talking about your ultimate step.

Mr. FELDMAN: I would say that would take place if you have
competition in a market and there are no impediments in this
market, ultimately the people handling it themselves, you
would get a better product and pay less in the long run. The
only thing this Act does come along and say, "It is much like
a game, you can go out and compete, this is one rule, you vio-
late this rule and we step in, you got to start over again or start
playing again." That is the only point that is involved.

The COURT: All right.

Mr. FELDMAN: Now, in talking about this specialized
3489 market, we heard, and our brief refers to it, in deposi-
tions also, the testimony of Mr. Gorman and also Mr.
Koessler. Mr. Gorman testified both at trial and also his deposi-
tion how in the 20's and 30's he went, on behalf of Interna-
tional, and bought these old presses, and what he did with the
presses, he stocked them away for some future use. At the same
time Mr. Koessler of Greater Buffalo did the same thing. They
used their skill in making these presses adaptable for color
comic supplements, that is, employing four colors, and all we
are suggesting is that all people in the United States who are
color comic printers, engaged in this business of printing or sell-
ing such supplements, are engaged in a type of endeavor which
can be seen to be distinct from other types of printing. That is
our suggestion, that is what we submit is the fact in this case.
In addition to that, when it comes to sales—

The COURT: Let me ask you; I don't remember Gorman, I
remember something about buying a press from a news-
3490 paper in Baltimore.

Mr. FELDMAN: That is correct.

The COURT: That is what you are talking about?

Mr. FELDMAN: Those type of presses, yes, sir.

The COURT: That Baltimore outfit was done, that was a piece of surplus in their hands?

Mr. FELDMAN: Yes.

The COURT: Wasn't it a Baltimore paper?

Mr. FELDMAN: Yes. That was Press 2055. That is the one that was constructed, bought, taken to Wilkes Barre, worked on, and ultimately shipped to Sylacauga. That was one such press. In that instance it was a very large press; half was bought by International for eventual use at Sylacauga, and the other half was bought by the company—

The COURT: That is what you claim it was bought for. What is the proof of that, that it was bought for Sylacauga?

Mr. FELDMAN: There is no problem on that, your Honor. I think that is admitted, that it was going to be used at Sylacauga. The only dispute we had was as to who did the work on it, who paid for it. I think it was agreed it was going to be bought.

It was improvised according to broad specifications of 3491 Greater Buffalo. We say the work was done by Wilkes Barre. This consisted of the use of—resulted in bringing about greater flexibility.

The COURT: From a consideration of anti-trust, you may say standing alone that is not sufficient, what is the significance that you want to urge upon me of the purchase of that surplus piece of equipment from some newspaper in Baltimore?

Mr. FELDMAN: Nothing as far as the initial violation is concerned. It has to do with Sylacauga. As far as the initial violation, the press there has nothing whatsoever to do with it. The only thing, it is the type of activity the people do in this type of industry, it is sort of a specialized industry. The other part of the press was bought by the fellow down in Newport News, and they improvised in their way that particular press.

The COURT: That remark, I'm sorry, but you said it is significant of the kind of thing that people in this business do, that is, specialize?

Mr. FELDMAN: That is right.

3492 The COURT: What is wrong with that?

Mr. FELDMAN: Nothing wrong with it, absolutely nothing. It is a very good American tradition, doing that.

The COURT: All right.

Mr. FELDMAN: All I am saying is the fact they did it in this way makes them distinct and separates them from other people in the printing business. There is nothing wrong, there is no stigma attached to that.

Now, in regard to this market we are talking about, we say it is also distinct because even on the selling end, and we get the testimony of one of NEA's officials that even selling these supplements involves a sales engineering job, in other words, you have to have special knowledge to sell it to the newspapers. To begin with, you can't be an order taker and say, 'I am going to sell you this.' These are tailor-made items, to begin with there is a masthead for the particular newspaper, and the seller who is coming around has to know what the make ready charges are going to be. You have to know
3493 what flexibility is involved. Suppose the man or the newspaper says, 'I want eight standard pages,' and the seller knows that that would not be practical, he has to induce him to take six standard pages. He has to know from the printer what the transportation costs are in the business. In other words, he has to know—in addition to that he would have to know the quality of printing, for example, that the particular customer wants. These are many of the considerations that would take place. Now, aside from determining what is the market we are talking about, and there is no stigma or ill finding in saying that the market is this or the market is that, it is unique, we claim, in this case, to be identified as the sub-market.

Now, in addition to that, the Court has to find out before he even analyzes what took place, who the people in this market or sub-market we are talking about are, what is the relationship of the parties involved here. Now, we say—this, by the way, is one of our oldest charts that we used in the prior
3494 proceedings, we are using it to reacquaint you with the names of people in the industry. We say in 1954 these were some of the printers. This was International, this was Greater Buffalo, this was Buffalo Color Press, and that was a subsidiary of NEA right here in Buffalo, that went out of business subsequently in 1955, in the latter part; and there were other printers throughout the country, you had Southern Color-print in Newport News; Eastern up in Connecticut, then—

The COURT: Wait a minute. That Buffalo Color Press formerly owned by NEA was a dead horse when Koessler got it?

Mr. FELDMAN: He never—he bought part of the assets.
The COURT: It was really a dead horse?

Mr. FELDMAN: Yes. I am pointing out what was in the industry, the people in the industry. Greater Buffalo not only printed color comics supplements but also sold these color comics supplements. Then, in addition to that, it sold them through some syndicates for newspapers. In other words, the syndicates would go around and Greater Buffalo would supply the supplements to the particular newspapers, but there were direct sales in many cases. In fact, the great rise of Greater Buffalo came from going out and soliciting directly newspaper customers. Now, International, in turn, didn't solicit or approach customers, it went through King. This was the main difference between the setup of International and King on the one hand and Greater Buffalo on the other hand. Greater Buffalo was a single, integrated outfit, doing printing and selling, and International and King, on the other hand, we claim, economically and functionally was one outfit, they were two separate corporations. Now, we say the two really should be looked upon as one, economically, for the following reasons. International—well, look at the supplements here—

The COURT: Why should they be looked upon as one? They dealt at complete arm's length.

Mr. FELDMAN: Who?

The COURT: King and International.

3496 Mr. FELDMAN: No, sir, they did not, we say not. When you say they dealt at arm's length; King entered into contracts with International beginning in 1925, they agreed under this—or International agreed to supply all its supplements for King's customers. Now, in this business—

The COURT: At a price.

Mr. FELDMAN: At a price. Everyone is making a profit, I assume, all doing it for a price. Now, in the printing of these supplements it is much unlike this ballpoint pen I hold; a manufacturer or printer whoever it is, can make a pen like that and take it and stack it away and maybe a month later you can give it to a distributor or you could go out and sell it to any customer or wholesaler, but in this case, there is no such sequence of events. When International makes this supplement, it makes the supplement pursuant to a request by King

to service a particular newspaper customer. Generally the supplement, when it is printed, will be shipped to the newspaper five weeks in advance. That newspaper when it is printed according to a specific demand can never be used by anyone else, it is a tailor-made job.

In addition, International, much like the other printers, is the one that makes the original arrangements for the transportation, and that is a very important factor, your Honor may recall from our prior proceedings. In other words, he gets in touch with a trucker and decides the cheapest way to do it and so forth. There are other things that International does and did during the years.

When King was facing competition they would call upon International to lower the price, saying this was called for in the competition. There was a continuing joint venture on the part of International and King. In fact, Gorman testified that in forty years he practically every day had a telephone conversation with Nicht about some matter or another. In other words, International was not any subcontractor of King, it was a joint venture on behalf of the two of them. Together International and King, International doing the printing and King doing the selling, were performing the joint economic activity that Greater Buffalo was engaged in. That was one part of the market. There were other significant color comic printers throughout the country, I mentioned some of them before, but the point was that, as far as the printers were concerned—of course, NEA was in the picture also—as far as the printers were concerned these were the two largest, International and Greater Buffalo. We say in looking at any market at all, in scrutinizing it, particularly when an acquisition takes place, the determining factor is the percentage acquired by the acquiring company through the acquisition.

In determining what the percentage is, there are various ways of going about it. One way may be for the Government in cases of this type to get independent surveys, go around and just find out who is printing for whom and what the volume of that printing is. Generally, any type of prepared surveying of this type is tainted, in the sense everybody knows it is going to be used for litigation. In this case we did something we thought was better, and better in the sense it was not prepared for litigation, that was what we called

and referred to in Plaintiff's Exhibit 61, Gorman's ready print survey. This survey consisted of the following:

Every year Gorman, as a businessman now, I assume without regard to any litigation, would get in touch with all newspapers, that is, through the mail, in the country which sold color comic supplements and ask them, one, the size of their supplements, who printed it, and on the basis of that compiled for his own use a survey of the entire country. It went by states, it went by cities, it was broken down as to which printers were printing for whom, what the circulation of the particular newspapers were, and the volume involved because of the standard size of this newspaper.

Now, originally we took this survey, this is the year 1955, this has been admitted in evidence, and we compiled 3500 through our computation some figures as to people in the industry and what they were printing. We used as a basis for that so-called four page standard, because that is what Gorman used in his survey. Here is what we mean by a four page standard. This comes out of the press as four pages, one at a time, and it is assembled later. That would mean if a newspaper had a circulation of ten thousand and they were using just a four page standard, the circulation in terms of color comic supplements would be ten thousand, and if they had an eight page standard, the circulation would be twice as much, twenty thousand. You don't have to use a four page standard, I think through the record Greater Buffalo has used an eight page standard, it doesn't make any difference, but Gorman, what he did in the case of Greater Buffalo, he converted, and this is the method that when we say there is a circulation in terms of four page standard, that is exactly what we mean.

On the basis of the facts which we submitted, Greater 3501 Buffalo in turn came in with figures and said you are wrong here, these are not accurate, and we offered that at the trial in evidence for the purpose of showing what the correct figures are and we accepted that for the purposes of this trial. Here is what the figures show in regard to Plaintiff's Exhibit 61 and also 62:

To begin with, Greater Buffalo had a circulation, in terms of four page standard, of close to 27 million fours. International had slightly over 27 million fours, so I guess they were on an

equal plane. In addition to that the other independent color comic supplement printers had amounts which were much less. In fact, Gorman in 1956, in describing how International fared and how Greater Buffalo fared, said that between the two of them, Greater Buffalo and International, they produced over 63 million fours per year. That 63 million may include Canadian accounts, perhaps at that time also included some

3502 Mexican and Cuban accounts, these were not included in the final figures. Then he went on to say—Gorman was the same individual who was extremely well-informed in the industry, he went around visiting all the plants, so he testified, and he knew the printing facilities of the various independent printers, and he also knew their capabilities—he said no other printing company—and I am quoting now from Plaintiff's Exhibit 1—produces more than 6 million weekly, and he is talking about four page sections there, and it is safe to say that the extra capacity now in reserve in other plants cannot print more than a fractional part of the supplements now produced by International.

Now, when International does 27 million fours and Greater Buffalo does 27 million four, 27 million four page sections, and no other printer could do more than six million fours, that represents a high percentage in terms of volume production.

3503 Now, this part of the Act isn't concerned with what they did, how they developed that, we assume that they did it by know-how and competition, in the case of International's original investment, but when you have people with a high percentage like that and Greater Buffalo purchases International, that act is illegal, that is what the Act is concerned with, this concentration that comes about because of Greater Buffalo buying International. Your Honor may say, well, look, the annual revenue of Greater Buffalo was only about eight and a half million, the same applied to International, that is not too much if you go into the oil business or the automobile business, we are talking about an industry where eight million may be a lot, as far as the other printers are concerned, any other printers around did only a small fraction, at any rate, never approached 6 million fours, while these two large companies were doing 27 million fours and perhaps even more, according to Plaintiff's Exhibit 1. We further say that on the basis of those statistics, based upon this specialized market we

3504 are talking about, this represented 75% of the volume of production by independent color comic printers. We further say that if you include in that market, the broader market, newspapers which print their own, this would represent 40% of such a market. We maintain in either case that it is bad and it is prohibited by the Clayton Act.

Now, in determining the weight to be given the percentage figures in any market, the Court in *United States versus Philadelphia National Bank* said, and I quote part of it: "Without attempting to specify the smallest market share, which would still be considered to threaten undue concentration, we are aware that 30% presents that threat." All the Court is concerned with, as far as the Clayton Act is concerned, is this concentration, nothing more. It goes on the assumption that if you don't have concentration——

The COURT: Was that a banking merger?

Mr. FELDMAN: Yes, your Honor, in the Philadelphia area.

The COURT: You don't see any distinction?

3505 Mr. FELDMAN: No, sir, none at all. In fact, in this industry *International and Greater Buffalo*, in rank, had a much greater share of the market than in this case.

The COURT: You don't see any distinction in banks merging and printers of newsprint merging?

Mr. FELDMAN: No, sir.

The COURT: You say the fundamentals are the same?

Mr. FELDMAN: The fundamentals are the same, sir.

The COURT: All right. Of course, banks have to be chartered by the sovereign, don't they?

Mr. FELDMAN: Yes, that is right.

The COURT: They are not easy to come by.

Mr. FELDMAN: That is right.

The COURT: There is nothing to stop another printer from incorporating or going at it, is there? Is there no difference in your mind at all?

Mr. FELDMAN: No, sir, in basic principle, when the case comes to a court under Section 7 of the Clayton Act that is not a consideration at all, that is——

The COURT: I want to look at that. You have been with that kind of thing much longer and been more involved than I have but—in other words, you are telling me in substance

3506 that a court faced with certain percentages of a market must find a violation?

Mr. FELDMAN: Yes, sir. Yes, sir, that is what I am saying. I am further suggesting, your Honor, that other considerations—

The COURT: You mean if there is nothing else, just the percentage found, no other consideration? Nothing unique about the type of business involved or anything else?

Mr. FELDMAN: I would say basically this is the fundamental thing.

The COURT: You cited two cases to me; one, Dupont had a special product on the market, they are tied in stock-wise to the biggest consumer in the country; and the other case is a bank merger where there is a peculiar requirement to bank at all, that is, a charter, under strict and limited—they are not issued every day. None of these things make any difference, in your opinion?

Mr. FELDMAN: No, sir. There may be certain impediments to being incorporated.

The COURT: That is not going to interest me at all. You get incorporated by filing a certain set of papers and paying
3507 a fee, and as long as you don't take the other fellow's name, you are in business.

Mr. FELDMAN: All I am suggesting, your Honor, is that the requirements to be met to become a bank are not necessarily the factors that are concerned in Section 7.

The COURT: That is all I asked, whether there isn't some distinction in the type of mergers you are talking about and the commercial mergers. Look, I am looking for education on this subject—

Mr. FELDMAN: I understand that.

The COURT: Because you have been with it, I have not, I know a little about it, but the things you cite to me, on the face of it, have a little inkle that is not common here, I am trying to find out about that.

Mr. FELDMAN: There are other cases cited in our brief, and I will refer to another called the Brown Shoe Company case that citation is 370 U.S. 294, decided in 1962. In that case you had one shoe company, namely, Brown, engaged in the production of shoes and also in the retail outlets of shoes going
3508 ahead and buying another company called Kinney, and the retail outlets of Kinney, that is, on terms of sales throughout the country were one point two percent, and their production in terms of throughout the country was even less,

considering it on the percent basis. There the court did find that Brown, that is, the acquiring company, in terms of production was the fourth largest in the country. They found there two types of mergers; one, the horizontal, between competitors, and also the vertical. By coming into this Brown would be able to use their production through the retail outlets of Kinney in disposing of their shoes. Now, true, the market is much larger there, and in talking about the market it was contended originally what you are talking about is footwear, and the court said, no, there were three markets; one, men's shoes, they found a distinction, and women's shoes, and there were children's shoes. In other words, three separate markets. Obviously someone making children's shoes could make men's shoes. They said no, they go about it in a different way.

3509 Whatever the reason, we are not interested. They broke it down into three types of market. To me it is similar to what these printers do in color comic supplements. There is nothing wrong about that, they are very unique, really people that show a tremendous amount of ingenuity both in the selling and also in the production end of it. Calling it a sub-market is a recognition you are giving them, saying these people are a little different than the next fellow, that is all.

Now, we say that once you find the percentage market, divestiture is mandatory under this Act, because you are not concerned in considering directly in this case what happened to Consumer A or B, all you are concerned with basically, as a trier of facts, is this economic concentration that took place, and the purpose of the Act is when you have a certain economic concentration that there automatically flows a substantial lessening of competition.

The COURT: What is the formula, when does that occur?

3510 Mr. FELDMAN: The reason I mentioned the Philadelphia case, they say when you have 30%, it is very suspect.

The COURT: Is that true of all industries?

Mr. FELDMAN: I would say most of them, it may vary.

The COURT: There must be a reason for the taboo. What is the reason for the taboo, you talk about economic concentration?

Mr. FELDMAN: That was the purpose of the Act.

The COURT: I know, but what is the reason, what is the underlying reason?

Mr. FELDMAN: The underlying reason is when you have this type, what we consider economic concentration, eventually after—first of all, competition is eliminated, they say it becomes—in other words, take this case over here—

The COURT: What are you urging me to do, find like a formula that 30% equals violation?

Mr. FELDMAN: What I want your Honor to find is that 30% is a prima facie finding that there has been a substantial lessening of competition in that line of commerce because of the acquisition and that in turn is based solely upon the acquisition of Greater Buffalo of International and nothing else, nothing else beside that, that is all, irrespective of con-
3511 spiracy or anything else, that is what followed because of it.

This is just one segment of the anti-trust laws just dealing with our problem, and it attempts to exclude basically all the other considerations. I might say this, your Honor, that as these principles—we are trying to work out a formula of the principles that have come down from the Supreme Court, these are lengthy decisions. You get the principle and you get—it is like corpus secundum, there isn't a proposition of law that you can't pull out of context and get it to support you—this we say makes sense when you take the facts of these cases, and they are cited in our brief, and you look at the ultimate conclusions. Now, in addition we say under the particular facts—

The COURT: Wait a minute. You said look at the ultimate conclusion?

Mr. FELDMAN: Of the court.

The COURT: I thought you meant the ultimate conclusion economically.

Mr. FELDMAN: No. You look at the conclusion and
3512 decide. You are going to get dicta here and dicta there, it could be pulled out of context. In fact, in the Dupont case—

The COURT: You mean there is nothing crystal clear in the Supreme Court in this area either?

Mr. FELDMAN: I would say it is fairly—in law there is nothing crystal clear, that is all I can say. In this area, because you are dealing with economics, judges like most are explaining why they do certain things, you could jump to all sorts of conclusions, that is one of the problems in the whole field.

The COURT: That is the reason I asked you whether or not there was a special consideration of the facts in an instant case.

Mr. FELDMAN: I would say—

The COURT: The only thing I have heard is the shoe case, and I haven't thought that through because I haven't read that, I don't know whether there was a tie-in or not. You have told me what you think the facts are.

Mr. FELDMAN: That is right.

The COURT: But the other cases, on the face of it, I would be suspicious of as being controlling in this case of the
3513 newsprint business, but I will have to—

Mr. FELDMAN: All I can say, there was no suggestion in the course of the opinion of any tie-in, if that word is used anti-trust wise.

The COURT: I am talking about the unique type of the industry, banking, and where you got holdings of stock of the consumer, the Dupont case.

Mr. FELDMAN: In respect to the people in this industry, basically, can anyone say people who make color comic supplements are not showing as much ingenuity in running their business as any bank?

The COURT: There is a difference between having ingenuity and having the ability to get a charter for a bank. That might take ingenuity too, but a different kind.

Mr. FELDMAN: Going on, your Honor, we say—this is the Dupont case, two of them cited in our brief, this is the second—the reason we say divestiture is mandatory, I qualify it in this sense, some of the cases hold that the trier of facts has
3514 broad discretion and then when the case comes up to the Supreme Court they say that is true but in this case the only remedy is divestiture, I am talking about divestiture itself, so it goes back. We say when a trier of facts is told that he has discretion but there is one alternative open to him, there isn't much discretion at all. In some of the other cases cited in our brief the court, after reversing the judgment of the trier of fact below, has on its own ordered divestiture without further hearings. Any further hearings in the District Court would be to implement the basic divestiture order of the Supreme Court.

The Dupont case, as far as the language goes, later on in

the second case, regarding divestiture, says that the very words of Section 7 suggest that an undoing of the acquisition is a natural remedy, and this is the point, in talking about the basic prerequisite to look for, it is the concentration rather than any of the acts in the industry.

The COURT: By divestiture you mean not just the Wilkes

Barre plant, you mean that in your opinion Greater

3515 Buffalo should divest itself of any and all control over
Lufkin, Sylacauga and——

Mr. FELDMAN: That would be divestiture. As far as this case is concerned, I mean the Section 7, just on Section 7 alone, divorced from anything, that would only be applicable to the Wilkes Barre plant and also to the Sylacauga plant. When we come to the Lufkin plant, yes, there were some assets and that type of thing involved in the competition, it is also tied up in the conspiracy, but just on the Section 7 we say there should be divestiture. I am not going into the injunctive relief surrounding such divestiture, that will be developed by Mr. Bernstein. We say that once there is a finding of illegality as to the acquisition of International, then there should be a finding or an order of divestiture as to Sylacauga, but that would first have to be premised upon a finding as to illegality of International. We say the basic premise is that International—and all the facts are spelled out in the brief, I will not elaborate further—

International, prior to 1955, with King had taken cer-
3516 tain definite steps for the building of a plant in the
south, namely, in the Sylacauga area, and it entered into
a—at least International acquired a mill contract for news-
print, and at that time there had been a shortage because of
the Korean War, and no color printer wanted or dared to go
into an area without some type of insurance that newsprint
would be available, and such a contract was for ten years, that
was signed, and Gorman in his letter indicated that to Nicht,
that was the first consideration they would have to overcome
and decide before going into a southern plant. In addition to
that, the president of International, namely, Gorman, visited
the area, and other personnel visited the area, and they estab-
lished relationships with the people in Sylacauga, and some
three weeks or four weeks prior to the sale of International, the

president of International wrote to the people in Sylacauga saying to them that we are definitely going into the Sylacauga area and please go ahead and purchase this land you are going to give us. The people in Sylacauga had been raising money to purchase this site and this was his letter to the people down there.

In addition to all that, and this is very important, this Sylacauga plant was going to be in competition with the plant that Greater Buffalo was developing at Lufkin, Texas, and about that time, namely 1954, Greater Buffalo signed a contract in the Lufkin area for the supply of newsprint for a given period of time, and documents in our files show that International was very concerned, so was King, I mean they are in evidence, of this competition that was going to take place between Greater Buffalo and King in the selling end to certain areas in the south and southwest.

Now, we further go on to say that after Greater Buffalo acquired International, the people at International went ahead and did the same thing, and this involves the purchase of Press 2055 and the sending of some six people for a year to help build and erect machinery and also the press in the Sylacauga area, and one of the chief employees of International becoming the manager of the plant down there under this subsidiary which was created, called Dixie, and in the transition phase the first president of Dixie was the president of International, and generally in the formative stages International handled all of the contact down there. In addition, they advanced money, the money was something like two hundred forty-three thousand dollars, the purchase of the company was only five hundred seventy-five thousand dollars. What Greater Buffalo did, as far as International was concerned, is what any normal corporation would do as an incident of ownership. We are only saying that that has to be viewed, because it put Greater Buffalo in a greater and stronger competitive situation because of the purchase of International and the building of this plant through International—

3519 The COURT: We have been going about an hour and twenty minutes. Let's take a short break and we will come right back at it again.

(Thereupon the Court was in recess at 11:30 A.M.)

(Proceedings resumed, pursuant to recess, commencing at 11:50 A.M.)

Mr. RAICHLE: I wonder if we could not answer Section 7, because it seems to be somewhat separate and apart from the rest of it, while it is fresh in your Honor's mind?

Mr. BERNSTEIN: If the Court please, it is woven into the entire argument. I would prefer to go on. We have something more to say about Section 7, and the defendant would have the opportunity to reply in full.

The COURT: Let Mr. Bernstein go ahead. How much time do you figure you will need, Mr. Bernstein?

Mr. BERNSTEIN: I think it will take an hour and a half, at the least.

3520 The COURT: All right, go ahead.

Mr. BERNSTEIN: The Government's position to this point is that the basis for the divestiture of Wilkes Barre and Sylacauga is that it is mandatory upon the Court if the Court finds that Greater Buffalo was prohibited from acquiring the stock of International, and the Government's further position was that the Court must find that Greater Buffalo was prohibited from acquiring that stock because the effect of that transaction may be to substantially lessen competition in the printing of color comic supplements and in the sale of color comic supplements and in the printing and sale of color comic supplements.

Now, the basis for the Government's request for the divestiture of the Lufkin plant is entirely different. The basis for that request is that the opening of Lufkin by Greater Buffalo Press was made possible only because of its acquisition of International stock and along with that King's business. Really what Grater Buffalo acquired when it acquired International, aside from the machinery and the plant, that wasn't the
3521 main thing, what it acquired was eight million dollars worth of business, it acquired the syndicate customer, its leading competitor, that was the main thing it acquired, and by acquiring that business it was then in a position to transfer runs from Wilkes Barre down to Lufkin, it was then in a position to be assured of opening Lufkin.

The evidence in this case shows that Greater Buffalo had been considering the Lufkin plant before—when I say “the

evidence" I am talking about Mr. Koessler's testimony, and Mr. Koessler's letters, and some NEA documents there which report information received from newspapers with which Greater Buffalo was dealing and with which King was dealing—there is no dispute about the fact that Greater Buffalo had been considering a Lufkin plant for a long time, to pass on cost savings to the newspapers in the southern area. But one of its principal concerns was that it didn't have enough volume to keep that Lufkin plant going, it had to transfer runs
 3522 from Wilkes Barre to do that, and that would cut down production at Wilkes Barre, but by acquiring King's business—

The COURT: How firmly did they acquire King's business?

Mr. BERNSTEIN: That is definite, solid, uncontrovertible.

Mr. RAICHLE: Wait a minute—

The COURT: Let us assume they acquired it that instant when these things happened, what tie did they have on King for the future?

Mr. BERNSTEIN: All right. Number one tie, they had a ten-year contract with King and—

The COURT: Wasn't there an escape hatch?

Mr. BERNSTEIN: I refresh your Honor's recollection of the evidence—

The COURT: Wasn't there an escape hatch cancelable in that as I remember it?

Mr. BERNSTEIN: Yes, and so we come to the second part, they acquired the only source of supply that King had. King could go to no other printer but Greater Buffalo or International. International had contracted itself, it was its captive plant. International was the only printer for King except for that 25%

3523 out on the west coast, and the only other printer was Greater Buffalo. Where could King go? In legal terms, yes, they had an escape hatch in the contract, but as a practical matter they were sewed up.

I refresh your Honor's recollection while we are on the point. Mr. Koessler testified, and the documents that he had on cross-examination, and he was cross-examined about certain letters that he had written to Mr. Nicht, that contract that had been executed, which was subsequently canceled, in Mr. Koessler's terms a contract which was signed and executed, subject to the approval of the board of directors, but later approval never

come in, the contract was null and void, the Government says it was canceled, which is a better way to describe it, but that is unimportant. The important point is that Mr. Koessler testified that he was anxious to get Hearst's business, he believed, and King had represented to Greater Buffalo that King was going to get Hearst's business, that is why Koessler wrote to Nicht, and he said these are the terms that—these are the

points we discussed on which we agreed could go into
3524 a contract. Those things were, one, that Greater Buffalo

would be the printer, with the exception of four newspapers, and King would be the seller of all Greater Buffalo's business, with the exception of four newspapers that Greater Buffalo felt it had to get the contract with the newspapers and King shouldn't get it for one reason or another, and there Greater Buffalo was going to give King a kickback of fifty cents a thousand, and so what Greater Buffalo achieved was a working arrangement with King that it would have all the business to put into the Lufkin plant, and that is the basis for our divestiture. That brings me into the point that this acquisition of International, the ability to sew up King's business, resulted solely from the fact there was an illegal combination—I will say illegal combination, it sounds less sinister than conspiracy,

conspiracy is a real dirty word, in effect it is the same
3525 thing, we are talking about a common objective—Section

1 of the Sherman Act says any combination or conspiracy in restraint of trade, this is a combination between King and Greater Buffalo in restraint of trade. What was the combination? Mr. Koessler's letters and Mr. Koessler's testimony, and this is confirmed by Nicht's uncontradicted testimony in the form of a deposition. As I explained before, the exclusive arrangement in that King would get the kickback, and as Mr. Feldman said before, because each one of them was then—then had about thirty-seven and a half percent, they had equal shares, of the printing done by all printers for those newspapers who did not print themselves—when I say "printers" I mean color comic supplement printers—they knew that when they agreed, they understood, it was an understanding in that sense of the word, that Greater Buffalo would be the exclusive printer for King, King would be the exclusive seller, that meant that Greater Buffalo was going to have

3526 75% of the market for the printing, which is a monopoly position, is more than five times more volume than any other printer, that gives the power to exclude, the power to control the price, that is the legal definition of a monopoly position. They also knew that when Greater Buffalo agreed, promised King, Mr. Koessler explained that Nicht was a very difficult individual, to get him off your back you had to promise him certain things, that he was very persistent, he had the power over features, and if Koessler didn't humor him and write the letter to him and say this is the kind of material that will go into a contract, Nicht was going to retaliate in some way. Nonetheless, Mr. Koessler said, 'We understand that you, King, will be the exclusive seller,' and that means that King will then control 75% of the sales of color comic supplement printing of those newspapers who didn't do their own, and that is the reason why the Government says that it would be clearly erroneous for this Court not to find that King
 3527 and Greater Buffalo had engaged in concerted action, or combination, in restraint of trade, whereby Greater Buffalo was to monopolize the printing of the sales of color comic supplements for those papers who didn't do their own, and King was to monopolize the sale of them.

Now, this conspiracy was established in stages, it didn't just happen over night. The first stage, according to Nicht's uncontroverted testimony, was that they agreed they would leave each other pretty much alone, that is, Greater Buffalo won't go after King's customers, and King won't go after Greater Buffalo's customers. The second stage was—this was before the acquisition, this was while King was obligated to International for International to be its sole and exclusive printer, except for 25% of its business, which it had for the west coast—King agreed with Greater Buffalo, Nicht and Koessler agreed, that King would transfer runs down to Lufkin—this is before the acquisition, this is before the acquisition when the Lufkin plant was opened—and King in exchange for that
 3528 would get fifty cents a thousand kickback from Greater Buffalo on all of the business, Greater Buffalo's business, that was put into the Lufkin plant that King didn't have. That was the second stage of the conspiracy, and with that arrangement going on, we come to the third stage of the conspiracy, where, according to Mr. Koessler, Mr. Nicht telephoned to Mr. Gor-

man of the International Printing plant, and told Mr. Gorman that Mr. Koessler was going to come over to see him. So Mr. Koessler met with Mr. Gorman at the Hotel Biltmore, I believe it was, and there were a series of discussions there. If you recall, Mr. Koessler said he was interested in—I think it is Mr. Gorman's testimony that said that Mr. Koessler said he was interested in the southern operation of International. What does that mean? That means that Koessler knew that International was proceeding with the development of a Sylacauga plant, he knew that he was proceeding with the development
 3529 of a Lufkin plant, and he said he was interested in that operation, interested in acquiring that operation. That would be a clear-cut violation of Section 7 of the Clayton Act because you are eliminating a direct competitor in that southern area, and Mr. Gorman said he didn't think the owners of International would be interested in selling the southern operation but they would be interested in selling the whole business, and then they continued their negotiations.

Now, we find from Mr. Koessler's testimony and these documents, the letters that he wrote to Nicht, P-15 and P-16, which were in June, June 2, 1955, and June 13, 1955—the acquisition was on June 25th, so this preceded the acquisition—and one of things that Mr. Koessler said to Mr. Nicht was. We are agreed that Greater Buffalo Press will purchase International,' so it was part of that transaction that Greater Buffalo was going to buy King's only supplier, and part of these letters show that Greater Buffalo agreed with Nicht as to—
 3530 Greater Buffalo agreed with Mr. Koessler as to what the printing price would be that International would charge Greater Buffalo, and after this agreement was reached in principle and set forth in these letters, then Mr. Nicht continued on discussions with Mr. Gorman for a contract which ultimately resulted in a contract that was signed after the acquisition, but the prices were established before the actual date of the acquisition in that contract, the formal document was signed after the acquisition.

So, therefore, the Government says it was all one ball of wax, one transaction that culminated in this acquisition and the elimination of the printing competition between Greater Buffalo and International and, more important for this part of the case, it was the—those series of acts resulted in Greater Buf-

falo's unobstructed opportunity now to open up the Lufkin plant, to transfer the runs that King had in Wilkes Barre, the new business that King was going to acquire, the new
 3531 Hearst newspapers that Koessler testified that if he got all of Hearst's business, as King had promised him, he didn't have sufficient capacity in Dunkirk to handle all of it, so he needed Lufkin, he needed Wilkes Barre, if that was going to come to pass. I understand from the testimony that it didn't come through, these two businessmen were dealing with one another and many of the things each promised did not come to pass, but that isn't the test of whether or not there existed a combination in restraint of trade. It is the meeting of the minds that certain acts occur that constitutes the concerted action, and now we come to the next point that your Honor is mostly concerned about, and the Government is too, it is a proper concern, that is, what are the equities in a situation?

Let's assume that everything that I have said is true. Let's also take into account that here is a business that a man started with a one thousand dollar investment and built up, and here is
 3532 a business that concededly was improved by Greater Buffalo in Wilkes Barre and in Sylacauga. Unless we provide adequate compensation to Greater Buffalo for those divestitures, if you are going to force a divestiture, it would be a confiscation of property without proper compensation. Therefore, the relief that the Government seeks here in seeking this divestiture, in order to do equity, is put in these terms: one, it must be at a fair price to Greater Buffalo Press, it must be compensated for the properties it is forced to sell. The way the Court assures itself that that happens is it selects its own trustee to supervise the sale, to see that the price is adequate, to see that nobody gets a windfall, that nobody takes unfair advantage of the seller, and also to see that the sale is made. In order to make sure the sale is made, as the Court asked before, why can't anybody else come along, why can't anybody buy an old press, what
 3533 is so unique about it? The point is what the anti-trust lawyers call the barriers to entry, in modern, ordinary everyday terms that means that no businessman who is interested in entering the business of printing color comic supplements for those newspapers who can't print their own is going to make that investment if he looks around at the competition and he sees that Greater Buffalo has 75% of the

market, he is going to be disinterested in that. On the other hand, if he says, "Wait a minute, Greater Buffalo doesn't have 75% of the market because he has got to sell the Sylacauga plant, he has got to sell Lufkin, he has got to sell Wilkes Barre, he won't have that share of the market, he will have to compete like everybody else for that share of the market." "What business will we have available to us," a prospective buyer will say, "Look, the Court ordered that one year from the date of this judgment Greater Buffalo will no longer be able to print for King, the leading seller of newspapers." Then a prospective printer says, "I have a ready-made customer, if King wants to stay in the 'business of selling printing he has got to get 3534 a printer, I have a customer there.'" Now, if it should turn out that my prediction is wrong, if it should turn out that nobody is interested in entering the color comic printing business, Greater Buffalo Press is entitled to everything that it has today and the Court order can say no divestiture is required unless the trustee accomplishes the sale within 365 days of this judgment to somebody who is going to use it as a printer of color comic supplements in competition with Greater Buffalo.

Now then, we have to watch another thing, we have to see that Greater Buffalo doesn't improperly benefit from this illegal arrangement that it made. So if it should turn out that Greater Buffalo is the only printer, that is, nobody else is interested in buying it, King, despite the fact that it no longer can get its printing done by Greater Buffalo says, "I am going out of the printing business, I'll just sell features," then in that event—or King may say—in order to prevent King 3535 from saying, "I'm not going to buy it, I'm not going to make arrangements with any other color comic printer to buy it because if it isn't sold in one year and Greater Buffalo can keep it I can go to Greater Buffalo and get my printing done there." If it knows that it can't because the Court prohibited it from doing that it has to make the same election it had to make back in 1954 and chickened out of it, it either had to put more money into International and create a printer or get out of the printing business and sell its features, and it shouldn't be a printer unless it is printing.

Now, in that event, if the Court prohibits Greater Buffalo from printing for King and also printing for any other syndicate that may come along and have King's ideas, for that reason

on we have this incongruous and incompetitive situation, when Greater Buffalo sells directly to newspapers and it also prints for syndicates who hold themselves out to newspapers as being printers, it is creating a false impression to the consumer
 3536 that the Court is concerned about and the Government is concerned about too. The newspaper has the impression that it is getting a competitive price from Greater Buffalo, as one competing seller against NEA, for example, as another competing seller, but in fact, Mr. Anderson of NEA testified, you have to have confidence in your printer, the kind of relationship that a syndicate has with a printer, it's got to know the printer isn't going to go out and undercut and take away the business of the syndicate because he is in a confidential relationship, he knows when the contract is expiring, he knows where the customer is, he knows all of the intricate details about the transportation and everything else, and if the syndicate develops that business and then the printer takes it away, the syndicate is going to consider that as unfair competition. There is understanding, a natural understanding between the printer for the syndicate and the syndicate, "You leave
 3537 my customers alone, I will leave your customers alone," and that is brought out in the documents and testimony of Mr. Anderson.

Now, that means that Greater Buffalo must make an election if it should find that it is relieved from any divestiture obligation because nobody has come along, it must either decide it is not going to deal with NEA or any other syndicate, but it is going to use its ingenuity and sell directly to newspapers as a printer, and that means NEA, King and any other syndicate, if they want to be in competition with Greater Buffalo, it has to develop printing facilities on its own or buy a printing facility plant, it has to do something, otherwise they are ceding a natural monopoly to Greater Buffalo. Greater Buffalo is acquiring this by default, not by reason of conspiratorial action with some of the other conspirators. So it can make an election it will sell alone, or make an election
 its only customers will be syndicates, it will sell to syn-
 3538 dicates. If it is going to sell to syndicates, you have the same situation we have now. King is one syndicate. NEA is another, Greater Buffalo has the printing, it is going to reap the benefits and the profits, regardless of which

one gets the order it is going to be the printer. Of course, if it harmonizes the two, eliminates price competition between the two, it can get a better printing price because neither one of them are at each other's throats, neither one of the syndicates. Therefore, in order to prevent that kind of an improper anti-competitive situation, if it elected to deal through syndicates, then the syndicate must act as a sales agent for Greater Buffalo. In other words, Greater Buffalo is the printer and these syndicates are acting as its salesmen for a commission, not a sub-contract, not a syndicate going out and saying, "I will sell you printing at this amount", and in turn make another deal with Greater Buffalo. It will sell the printing for Greater

3539 Buffalo, the syndicate will be the salesman for Greater Buffalo, and so that all can come in in a non-discriminatory manner or Greater Buffalo can elect to select one syndicate only, one syndicate only, it will be its exclusive printer and the syndicate will act as the seller.

Now, that only becomes fair because everybody has one year's notice that this is what is going to happen, and "if you want competition now is your time to come along and do it," and if they are not interested in the business that means the nature of the industry is such that it really can't—it just lends itself to a natural monopoly. That determination will be made by supply, demand, business decisions of lots of other people, and not by conspiratorial action between two of the major competitors.

Now, in order to do what I have just outlined——

The COURT: Let me ask you something that just ran through my mind. This divestiture business, let's assume that these plants were ordered divested, what do you do about good will and things in fixing a price?

3540 Mr. BERNSTEIN: That is what you are selling. Each plant——

The COURT: You claim the good will is illegal.

Mr. BERNSTEIN: Absolutely not.

The COURT: This contract you say is an improper contract between——

Mr. BERNSTEIN: King and Greater Buffalo.

The COURT: King and Greater Buffalo.

Mr. BERNSTEIN: The reason that contract is illegal——

The Court: That is all there is, if they don't have a contract they have no good will.

Mr. DENSMORE: You are talking about King's business?

The Court: Yes.

Mr. DENSMORE: That is why I say if the Court, in its judgment, prohibits Greater Buffalo from buying—from printing for King for one year's time, that means that everybody who is interested in the plant knows that it has King as a potential customer, unless King wants to go out of the printing business. It seems highly unlikely, King made eight million dollars worth of sales of printing it had 37% of the market, it seems highly unlikely that it is going to give it up by default.

3541 So they do get the good will. The customer does get the good will, somebody is buying a plant with available customers. They are also buying the availability of NEA. NEA can make that election or some other syndicate can make that election. What we are interested in is the opportunity for competition. Nobody has a crystal ball that can predict with certainty all things. It is a reasonable probability. This is creating the climate, the opportunity for competition, if it is going to be. This is going, as I said, to impose a restriction on NEA because if Greater Buffalo is prohibited from printing for NEA, except on certain terms, NEA says, "I have got a contract with Greater Buffalo, you can't cancel that contract." The only way that contract would be cancelable is if it is illegal, if the Court prohibited it, and the only way the Court can prohibit NEA from continuing on in a contract is if that contract was entered into illegally, if it was the result or fruits of an illegal combination in restraint of trade, an illegal conspiracy, that is the only reason why it is important in this case, it is the only reason

3542 in this case the issue arises as to did NEA join the conspiracy or did it not. NEA, the Government says, joined the conspiracy, because when it sold that junk press what it really was selling was its accounts, it sold those accounts to Greater Buffalo.

Let's follow this through for a minute. Here is NEA with a junk press, it can't do its own printing any more because of the antiquated equipment, so it has two alternatives, it is either got to liquidate, junk it, get out of the business, which means that all of the newspaper customers that it then had are up for grabs for all other competitors, there is competition for

that business, or it can remain in the printing business by getting another color printer, such as International or World Color or Acme or somebody else. NEA doesn't take that route,

NEA goes to Greater Buffalo. Now, this is a sound business decision, why not, you always go to number one, and their relationship had been such that it was natural to go to Greater Buffalo. But the important thing is what NEA was really selling was its customers, it sold those customers under the term that it then had the opportunity to keep those customers——

The Court: You are talking about the junk press in Buffalo?

Mr. BERNSTEIN: The junk press in Buffalo.

The Court: Where would you go to sell it if you had a possible buyer, to some remote printer?

Mr. BERNSTEIN: What happened to the junk press, was it junked or used? It was partially junked——

The Court: I am talking about you got a printing plant called Buffalo Color Press in Buffalo, you got a—you call it a junk press, you want to get out of the printing business in Buffalo——

Mr. BERNSTEIN: Oh, if you want to get out of the printing business——

The Court: In Buffalo.

Mr. BERNSTEIN: Do you mean not print or lose the newspaper accounts?

3544 The Court: I said you want to quit printing in Buffalo.

Mr. BERNSTEIN: Quit printing in Buffalo.

The Court: Where would you go to liquidate?

Mr. BERNSTEIN: These are the only decisions that you have to make. You either have to sell the junk press at salvage value and give up your customers because you have determined that you are not going to print any more, or you have got to buy a new plant or get yourself another printer if you are going to keep the customers, or make a deal with some other printer by selling them those accounts, and that is what NEA did, it sold those accounts to Greater Buffalo. Now, what were the circumstances under which it sold those accounts? It then knew——

The Court: Let me ask you, where were the accounts that they sold? Weren't they in the environs?

Mr. BERNSTEIN: Oh, no, they were all over the country, they were all over the country; Waterloo, Iowa; Sioux Falls; down south, all over the country.

The COURT: All right.

3545 Mr. BERNSTEIN: Now, what was the climate of the environment in which NEA made this transaction? It knew from its own experience that if a printer is dealing with a syndicate there has to be—there is an implied understanding, you leave my customers alone, I will leave yours alone, and it knew that Greater Buffalo had acquired the supplier of its leading competitor, King, and was then printing for King. So then it had to infer, it is a natural inference, any businessman knows that, that King and Greater Buffalo are not then in competition with each other for their business. Otherwise, King, which theretofore had been Greater Buffalo fiercest competitor up to the conspiracy, King would never permit a situation whereby its only source of supply would be acquired by its leading competitor, it would do everything to stop that. There is a document in evidence which shows that in 1954 an NEA official said he received word from one of his Texas people who said, "I spoke to so-and-so of the Dallas Herald," that was a newspaper that was then printed by King, it was King's ac-
 3546 count, and he said, "King and Greater Buffalo have made an arrangement whereby King is going to transfer some runs to Lufkin." This is in 1954. Clear hearsay, clear business rumor, not competent to prove that actually happened. It turns out from other facts and other documents in testimony from Mr. Kocassler and these documents that that was the fact, those things had been done. Nicht's uncontroverted testimony said that arrangement was made. The rumor was a good one, and since it came from a newspaper that King was selling to, King had an advantage to say to them, "We are pretty soon going to print down here, you are going to save the transportation." It was pretty reliable. In any event, NEA was alerted to the fact that Greater Buffalo and King were not the real competitors they should be. Maybe that is a suspicion, a surmise, you can't call them conspirators because of that, but the next
 3547 thing they learn is that Greater Buffalo acquired International's stock. That is another fact that would alert them to the point that there must be some kind of an arrangement, but even that isn't enough.

Now, what happens, according to Mr. Anderson's testimony, from the time that Greater Buffalo acquired International and October when it made this deal selling its junked press and its accounts—what it really was selling was the accounts—until that time it was in constant negotiations with Mr. Koessler, and it was constantly complaining to him about the unfair advantage that King had over them, and the substance of the complaint was this; they said that King has this very special arrangement in the International printing place whereby no matter how many times they change the pages of the make ready on the color comic supplements they don't have to pay a cent more, and NEA was in a different position, in Greater Buffalo's plant any time they had a change of a feature or they had a change on one of these pages, any one of these pages, any time there was a change on it, NEA paid more money.

3548 So they said to Greater Buffalo this is unfair, especially because King is keeping NEA's features out of these newspapers in this way. That is all Anderson's complaints to Koessler. He said, "When I sold to newspapers getting a ready print from King, printed by International, the newspapers say to me, I can't substitute an NEA feature for a King feature because if I do King tells me that the make ready charge is going to be high." NEA knows of its own knowledge that King is not paying any more for that, so it is unfair competition in NEA's view. So it knows, it feels it is getting a fair price, Koessler told them, "I inherited this contract from International, I can't change it, I am giving you the lowest price in the Greater Buffalo plant, your price is no different than I sell to anybody else." So therefore Mr. Koessler says, "Why don't you talk to Mr. Nicht?" And Mr. Koessler makes the arrangements, ar-

3549 ranges a meeting at the Beverly Hotel in NEA's suite at the Beverly Hotel, but before that meeting, according to Mr. Anderson's testimony, before that meeting he had a conversation or series of conversations with Mr. Koessler, and the substance of the conversations was, in Mr. Anderson's mind, that he felt fairly confident that an agreement could be reached between King and NEA, that they would have a truce, they would leave each other's customers alone. So they went to that meeting at the Hotel Beverly and there they reached a truce with King, and Mr. Nicht said when he left that meeting he felt they were going to leave each other's cus-

tomers alone. Anderson said when he left that meeting NEA determined if King was going to live up to its truce, it was going to live up to its truce. It issued instructions to the sales manager and the salesmen ultimately knew about it, and until 1957 that truce was on. After 1957 NEA was disgusted with the way King was honoring it, so NEA didn't honor it any more,

and in 1958 it sent a notice to all the salesmen that the
3550 truce was no longer in effect. The important thing is this; where is the conspiracy, what is the conspiracy?

The conspiracy, I remind the Court, is for Greater Buffalo to monopolize the printing and King to monopolize the sales, and now when NEA makes a deal with King that it will leave its customers alone and King will leave NEA's customers alone, it is in effect agreeing that King and NEA will share in the selling. So the 75% of the printing—when NEA sold its accounts to Greater Buffalo, knowing that Greater Buffalo had acquired International and then controlled 75% of the printing for all of the newspapers that didn't print their own, and added to it its accounts, it increased the monopoly position of Greater Buffalo, and therefore NEA knew that it was increasing Greater Buffalo's position, and it knew that it had an agreement with Greater Buffalo not to take each other's business away from one another, and when it entered into an agreement with King

not to take King's business away in return for a recip-
3551 rocal promise by King, in effect what it was doing was entering into a combination or conspiracy that was in restraint of trade, that Greater Buffalo would monopolize the printing of color comic supplements and King and NEA would monopolize the sale, and it is because of that base this Court has the right to declare that as a result of that illegal conspiracy, to dissipate the fruits of it, NEA must be subjected to these restrictions, that in one year's time if Greater Buffalo is relieved of the divestiture of its plant, then Greater Buffalo can't print for—has the right to elect not to print for NEA as a syndicate, even though NEA has a contract with Greater Buffalo.

So now we come to the next point of our argument, that the defenses that have been raised in this case have no merit. What are the defenses? The first defense to the Section 7 violation was that International was a failing company. As your Honor knows, Section 7 of the Clayton Act which prohibits

3552 any corporation from acquiring the stock of another corporation where the effect may be substantially to lessen competition in any line of commerce, the cases hold that this prohibition is not applied against an acquisition where the company acquired was insolvent and there was no other purchaser, and that is known as the failing company defense. This defense is what Greater Buffalo raises. The facts don't bear it out. International was not insolvent, it paid dividends, the documents, the minutes of the directors meetings in evidence shows that up until the time of the acquisition it was paying dividends to its non-active owners of the stock.

The COURT: You mean that family down there that was always making demands?

Mr. BERNSTEIN: The Govine family up until the date of the acquisition constantly received dividends, over and above all of the salary expenses for the management, the president, after all the other expenses were paid, and the evidence shows, 3553 the documents in evidence, the minutes of the meetings of International shows that those dividends were paid after a certain reserve was set aside for the acquisition of Sylacauga. The amount of money——

The COURT: Who was that family?

Mr. BERNSTEIN: Govine.

The COURT: That is where the woman married some duke, I remember that was commented upon. All right.

Mr. BERNSTEIN: And furthermore, up until the date of the acquisition International earned a profit, every year it had a profit. Now, the failing company doctrine isn't applicable to a situation where a corporation is not earning the kind of revenue that it would like to earn, or doing as well as it would like to do, or its sales are diminishing; that doctrine only applies when a company is insolvent, and even when it is insolvent, there are not other purchasers, so that defense is out.

The next defense is market. Mr. Feldman went all through that, and the point that Mr. Feldman was trying to make about all of this uniqueness, all of this skill, there was a simple 3554 point he was trying to make, and that was that Section 7 says an acquisition is prohibited where in any line of commerce the effect may be substantially to lessen competition, so logically the courts have said the first thing we have to do

is find out what is the line of commerce. What Mr. Feldman was saying was that this Court has to say there are any number of lines of commerce and in every one of them there may be a substantial lessening of competition. The first line of commerce is printing of color comic supplements. That means you take into account all of the newspapers who could print their own and all of the color comic printers who print for newspapers, and we find that Greater Buffalo by this acquisition acquired 40% of the market, and the significance of the percentages, your Honor, is that where a company has 40% of the market, by acquisition, that indicates that there has been, not maybe,

there has been a substantial lessening of competition
 3555 because prior thereto there was competition for 20%
 and 20%, and that was eliminated, now that amount of competition has been eliminated, and so there has been a substantial lessening.

The Court: Doesn't that happen every day with companies that are not doing well, they are not competitive, and somebody swallows them up?

Mr. BERNSTEIN: Let us not paint with such a broad brush—

The Court: I asked you a question.

Mr. BERNSTEIN: Swallowing them up, if they are swallowed up by an acquisition of stock or swallowed up by the acquisition of assets or merger, any one of those two, if they are swallowed up in that manner, then every one of those transactions has to be examined into to see whether the effect of that acquisition may be to substantially lessen competition in some line of business, in some market, in some part of the country, and if it is then it is prohibited. Many, many times, all of these
 mergers that go through, that you see are not stopped.
 3556 there are no litigations, or either somebody has determined that the substantial lessening of competition in the line of commerce is not significant, it is insignificant, but where you get an acquisition of 40% of the market, then it is significant, and certainly if you look at the sub-market here, that is, printing for those newspapers that don't do their own, then you find 75%, and in that sub-market it is even greater, the effect surely is to have lessened competition in that market, and because now the only significant printer is Greater Buffalo.

Now, your Honor is concerned about the fact didn't it acquire that position because of its skill and ingenuity, and the answer is no, not entirely, because it acquired it by——

The Court: Supposing it had by its skill and ingenuity?

Mr. BERNSTEIN: By its skill and ingenuity? There would be nothing wrong, there would be nothing wrong. That is the solution that the Government is proposing. If the Court
3557 orders the divestiture that the Government proposes and nobody else comes along, then Greater Buffalo will have acquired its position by its own skill and ingenuity alone, without an acquisition and without a conspiracy.

Now, the next point that is made, this is a minor point but I think we should comment on it at this time, the arguments are made and the Court has under consideration the Nicht documents as to whether they are admissible. The Government's position is that even——

The Court: Let me ask you something. I hate to interrupt you. Now, at the time that International was operating down there, do you contend that they were competitive in skill, in any sense of the word——

Mr. BERNSTEIN: Yes.

The Court: ——With Koessler's operation?

Mr. BERNSTEIN: Yes, sir. They were not as good, they were not as good, but they were sufficiently competent to enable King to have an equal amount of business that Greater Buffalo had.

The Court: I got the definite image that the plant
3558 was archaic, that the printing machinery was archaic, that that family you mentioned was on the back constantly of the producers for more money to meet their requirements, and that indeed, at least from the manager who testified here, it was a dim picture as far as production is concerned. You don't agree with that?

Mr. BERNSTEIN. I don't agree with that. I would characterize it in this fashion, your Honor, and first I must concede the true parts of the contention of International's manager. Yes, the Govine family was always on its back. Yes, they were not getting the kind of price out of King that they wanted to get or should have gotten. Yes, they needed to do something, but I disagree that their plant was antiquated and on the way out, because King was relying on that completely, and they were

operating successfully, and NEA was concerned about competition from International and King.

Now, it is true that NEA was more concerned when they heard that Greater Buffalo acquired International because
 3559 cause, in the words of Mr. Anderson, this is his testimony, he said, "Now I was concerned that whereas King not only has a better price from International because he is milking that family, he is now acquiring Greater Buffalo's ingenuity and skill and economies in the make readys and everything else," and he is concerned about the competition from King. That is why he went to Koessler and expressed that concern to him. That is what resulted in the truce, that is the way they were going to neutralize it. International wasn't the failing company that the impression would create just from the fact Govine was on their back and they were not getting as much out of King as they should have.

The COURT: What about their gear?

Mr. BERNSTEIN: Their equipment was satisfactory. The testimony in the case was that it was improved, economies were made in the equipment, and economies in the operation were made, and it was improved. That is not to say because
 3560 equipment can be improved that it is in the same category as the junk Buffalo Color Press. They were moving every day, and the union depended on them and they were employing a lot of people, and that was not a junk plant that was dying on the vine, it was going, it was going. So what I started to say, your Honor, was as far as the Nicht documents that are under advisement by the Court, the Government does not require those documents to support the finding that Greater Buffalo and King engaged in this conspiracy, because the testimony of Mr. Koessler, and his own documents, and Nicht's uncontroverted deposition, established that. The documents flesh it out, the documents put meat on it, it answers a lot of unanswered questions one may have, it is good background to show the milieu in which this is being done. The Court can weigh which parts of the documents to accept and which parts are incredible. If the Court recalls, when Koessler was cross-
 examined he took many, many of those memoranda
 3561 it was taken down sentence by sentence, and he confirmed those things actually occurred. So the documents are reliable, and the Court can determine how much weight to give them.

The COURT: Let me ask you this, Mr. Bernstein, let's assume that Koessler wanted to be truly greedy. He had that International plant, did he not, he had the Buffalo plant, he had the skill to print well and he apparently had the skill to sell well. Why did he have to do anything with King? He could say, 'If you want me, start dealing with me, start competing with me.' Why did he have to say, 'You sell and I print and I print and you sell, so we have a Mexican standoff here.'

Mr. BERNSTEIN: If I understand your Honor's question—

The COURT: He had the world by the tail, according to you. He had a plant that was good, not the best, but good.

Mr. BERNSTEIN: Excuse me. At what time, prior to the acquisition?

The COURT: Yes.

Mr. BERNSTEIN: The answer is this; he had the world
3562 by the tail but there was a leveler, and Koessler went to great lengths to tell us what the leveler was, why he was so afraid of Nicht, why he didn't have the world by the tail, because Nicht had the power over the features, Nicht was tying in the features.

The COURT: He had to have them printed somewhere, you say he could not get them printed anywhere.

Mr. BERNSTEIN: Nicht had them printed at International. How would Greater Buffalo—

The COURT: You said before acquisition. I mean when Koessler got International and Buffalo Press, then why couldn't he just say go and whistle to King Features?

Mr. BERNSTEIN: Well—

The COURT: That is, if he wanted to be truly hungry.

Mr. BERNSTEIN: Koessler said he was still afraid after he had International and Greater Buffalo, he was still afraid of Nicht's power over the features, because he was afraid that if he told King to go whistle—

The COURT: It is part of your argument that King and Nicht
3563 had to come on their knees and deal with Koessler because they were beat, he had everything wrapped up in skill and facilities.

Mr. BERNSTEIN: No, the gist of my argument is that Nicht, King, NEA, any other syndicate, any other printer, could nonetheless compete with Greater Buffalo on a fair basis, even if they didn't have any tie-ins or anything else, it was fair competition, because they were—even though Greater Buffalo had

the greatest skill—because they had the greater marketing organization. They were—their salesmen, they had many more salesmen than Greater Buffalo, they were out selling newspaper features anyway. If your Honor recalls the industry, the license to the feature was gotten by the newspaper, it wasn't gotten by the printer. Even if Greater Buffalo went into every one of these newspapers and said, "I will do the printing for you instead of your own," the newspaper had to get the license

from the syndicate. If King didn't give them a license, 3564 Greater Buffalo with all its skill couldn't print page number one. So there was a countervailing power, they just couldn't do it. Those were the realities of the industry.

The Court: What about this kind of a reality? Somebody finally comes to the conclusion, including International, that Koessler is the best and you can't beat him, he knows how to do it and do it well and reasonably, and Koessler up to then had been not only printing, he had been selling, and somebody says look, we can't beat you printing—according to your argument—but since we have the franchise here you can't beat us selling either, so why don't you print and why don't we sell? Would that be contrary to law if they did it in that fashion?

Mr. BERNSTEIN: I would say most likely—the reason why I say most likely with not 100% confidence—in order to establish either a Section 1 Sherman Act violation, that is, the combination in restraint of trade or contract in restraint of trade. I have to find out all of the facts, it is difficult to take a hypothetical situation, but I am saying in general, to articulate the principles, that is what I gather your Honor is interested in—

The Court: You have got a lot of evidence in this case subject to a certain interpretation which you, as an advocate, are interpreting positively in the way you feel it indeed should be interpreted. I don't think any of it is so ironclad that it couldn't be interpreted in another way.

Mr. BERNSTEIN: To answer that point, your Honor, the reason why I make that dogmatic, categorical, sure statement is that there is no evidence here that King decided it was going to get out of the printing business. As a matter of fact, all of the evidence shows that it was moving along toward opening up a Sylacauga plant. The testimony in the case shows that King

had more than 80% of all the business done in the southeast, and it wanted to service those customers by getting cheaper transportation, and it was going along on Sylacauga. There is no evidence in this case that Mr. Gorman or the employees or anybody else in International, except the owners, were interested in getting out, and the owners were only interested in getting their money. They made no investment, they made loans to the corporation, the loans had been repaid, none of their money was tied up in it whatsoever, all they were doing was salvaging something. So under the circumstances of this case the only way it could be accomplished is either by an agreement with King, which would be illegal, or by an acquisition, which would be illegal. If it happened the other way—let's change the facts, your Honor, let's assume for the moment that International had gone to King and said we have had it, we don't intend—we find that you have paid us so little money that we are not interested in printing any more, and we are going to liquidate, we are going out of business, and we are going to put up our plant for sale, and we are selling our machinery, we are selling the real estate, the bricks, we are going to discharge our employees, or they could say we are putting up our stock in this company for sale on the open market, we are going to get brokers and announce our stock is for sale, that is what is going to happen. In such event, if Greater Buffalo came along and said, I am going to buy your stock, the Anti-Trust Division would come along and seek to enjoin this on the ground it violates Section 7 of the Clayton Act, and if the Anti-Trust Division for one reason or other, it is made up of people, if the people are too busy or inept or they don't move, any other color printer could have brought a civil action for an injunction or damages to prohibit that kind of acquisition, because Section 7 of the Clayton Act prohibits it. So it couldn't be done that way. On the other hand, if International said we are going to stop business, and they stopped doing business, and then King said well, I will go to Greater Buffalo, I have no printer, I will go to Greater Buffalo and say to Greater Buffalo will you print for me, as would anyone else, if he didn't say I will give you my business only on the condition that you don't deal with anyone else, then it would be lawful. The way King did it was to say I will give you all of my business and all of the Hearst

newspapers if you agree I will be the exclusive seller, you won't deal with NEA or anybody else, that is the illegal part of it.

Now, the next argument that is made by the defendants is that it is erroneous to find—the next argument that is made, there is another interpretation, as your Honor just suggested, these letters, P-15, P-16 and the contract P-27, never really were effective, it doesn't constitute a contract. This argument assumes that the only basis for violation of Section 1 is the existence of a valid and enforceable contract. That is not what Section 1 says. It says any combination or conspiracy in restraint of trade, and that means any understanding, any meeting of the minds. Mr. Koessler said here, and he wrote it down, "This is what we agreed could go into a contract," and the written contract itself says it is effective May—it is signed and executed contract, it says, Paragraph 14, "This contract shall be effective May 5, 1958." It runs from December 1, 1957 to November 30, 1967, and the evidence was that the board of directors of each company rejected the contract after it had been formally signed in October of 1958. The Government's point is that regardless of the formal contract, this understanding did exist, and it was testified to by Mr. Koessler, he explains it. He said, "I did it because I feared Nicht's power over features." Nonetheless, he conceded that he did it. The documents themselves, the documents themselves, when the Court examines the precise language it will see there is a lot of formal language in it. Mr. Koessler acknowledged authorship of it, of many of the paragraphs, although he said that many of the paragraphs were insisted upon by Nicht, and he put them in there for that reason. There is one paragraph that he said he himself—no, excuse me, I am wrong—this was a paragraph that he drafted because Nicht asked it go in. I am reading Paragraph 10 from P-16, and I am reading it to demonstrate to your Honor that this is not casual, informal, scrap language. This is precise, formal language that would perform the provisions for a contract. "The provisions contained in Paragraph 9 may be altered by mutual consent of the Greater Buffalo Press, Inc. and King Features, Inc., where the interests of both parties are mutually served. Any and all provisions of this contract may be changed by mutual consent and the mutual interest of both parties." This isn't the normal talk of one businessman writing to a customer. This isn't the normal business jargon. This is legal language, this is something that the Government submits—

The COURT: It simply means that it is subject to renegotiation if the parties feel it is of mutual interest.

3571 Mr. BERNSTEIN: Right.

The COURT: What is so legalistic about that?

Mr. BERNSTEIN: I am using it to point out that the defendants argue that these don't show the reaching of an understanding because it was not a formal contract. I am saying the parties must have reached such a point of negotiation that they were talking about precise language that could go into a contract. That is the kind of an understanding that forms the basis of concerted action or combination in restraint of trade. That is the only point that I am making.

The next point is that now we get to the tie-ins on the part of NEA, and this goes only to NEA. The only reason that the Government asks the Court to find that NEA violated the anti-trust laws——

The COURT: That is what counsel already said before, isn't it? I heard that argument before.

Mr. BERNSTEIN: On tie-ins?

The COURT: Yes.

3572 Mr. BERNSTEIN: Today?

The COURT: I thought I did.

Mr. BERNSTEIN: No.

The COURT: All right, go ahead.

Mr. BERNSTEIN: I want to make this point, the tie-in point is developed adequately in the brief, and I don't want to take up the Court's time, it is not necessary, the Court itself mentioned before that it is fully familiar with this branch of law in the Trico case where you tie in a patent.

The COURT: I am not sure about fully familiar, I have sure heard of it. Go ahead.

Mr. BERNSTEIN: I respectfully refer the Court to our briefs for the detailed explanation of this phase of the case, and I won't elaborate on it except to say this, to give you the gist of the Government's position, and the gist of the issue between NEA and the Government——

The COURT: Mr. Feldman's point was on NEA, not the tie-in. Go ahead.

Mr. BERNSTEIN: The Government contends that what NEA did is an understandable business practice, it made up make ready, it made up a page like this, four page, six

3573 or eight, then it went around to several newspapers and it changed the masthead. It had the same features in some instances, in other instances the newspapers would say give me the same thing just change this feature on Page 3, and then in another one they would say the same thing, change the feature on Page 2, and so forth. Although it is a makeready, it really is a custom-made product. What NEA did was it would put together a package for features, and it said to the newspapers for X dollars you will get this color comic supplement and you will get this editorial article, and you will get, and so forth and so on, and there was a unit price for it. The newspaper didn't know what part of that unit price was applicable to the printing and what part was applicable to the features, and so on. There is nothing so inherently wrong about it, the anti-competitive effect comes out in this way, every one of those features is copyrighted so NEA has a lawful monopoly on the licens-

3574 ing of any one of those features, and when readership develops for any one of the comics—even though you and I might regard this as an unfunny comic, there is a certain number of people develop a readership for this—the only place they can get it is NEA. When NEA says in effect that the only way you can get these features is if you take the whole package, that means you don't buy the printing from someone else, as long as you get the printing from us, you buy the printed supplement from us, you will get the features at this price, if you just want the features then the price is higher. So we see the abuse that came in in the case of King, through Mr. Koessler's testimony, and all the Government is trying to do here is to prevent the same kind of abuse from setting in in the event this Court orders divestiture, and in the event Greater Buffalo becomes NEA's printer, then the Government contends that this illegal practice should be curtailed, and NEA should be prohibited in such event from this kind of an arrangement

3575 unless it informs the newspapers at the time it does it that in this unit price this is the amount of the printing, this is the amount of the features, so that the newspaper at any time can go to another printer and say, I can get the features for so much, how much are you going to charge me for the printing, there is that opportunity for competition. Thank you very much.

The COURT: All right. Now, gentlemen, what is your pleasure? Shall we get this over and done and have a bite to eat later?

Mr. RAICHLE: Whatever suits the convenience of the Court.

The COURT: I am willing to sail on here. I thought maybe it would be wise—I think probably you would like to get on the road at a reasonable time. Give me a rough estimate of your combined time in your judgment, you, Mr. Stevens, and you, Mr. Raichle.

Mr. RAICHLE: I don't have in mind more than a half hour myself.

Mr. STEVENS: That would cover both me and Mr. Karch, I believe.

The COURT: Supposing we take a short break and then
3576 we will resume.

(Thereupon the Court was in recess at 1:00 p.m.)

(Proceedings resumed, pursuant to recess, commencing at 1:20 p.m.)

The COURT. Yes.

Mr. RAICHLE: Your Honor, let me start with a few fundamentals. Also let me take you back to Mr. Feldman's discussion of the law with respect to the application of Section 7. I was quite confused by what he had to say, and quite reassured, however, that your Honor was thinking clearly on the subject. As I listened to him I got the impression that he was contending that there was some hard and fast rule with respect to the percentage owned, or percentage acquired, or percentage enjoyed by those engaged in a certain line of business, which forbid them to grow bigger, acquire a larger percentage, or merge or acquire another company of any percentage. Let us
take the Brown Shoe case, the one that he cited himself.

3577 Let me read you the pertinent excerpts. This is the United States Supreme Court in the Brown Shoe case, and I don't mean anything personal or invidious, but it would seem to me that if counsel were going to cite from the case, he ought to have been fair enough to read the provision that I am going to read. The Court said: "While providing no definite quantitative or qualitative tests by which enforcement agencies could gauge the effects of a given merger to determine whether it may substantially lessen competition or tend toward a monopoly, Congress indicated plainly that a merger had to be functionally viewed—here come the important words—in

the context of its particular industry." That takes us back to your Honor's observation about the bank or banks, and regulated industry, access to the industry, with limited numbers permitted to engage in it, and so forth, as contrasted with this printing business that any newspaper in the country can get into if it wants to. Let me read further from the Brown Shoe case, and this I think is a point of departure between counsel and myself. "Taken as a whole," says the Supreme Court, "the legislative history illuminates congressional concern with the protection of competition, not competitors, in its desire to restrain mergers only to the extent that such combinations may tend to lessen competition." That is pertinent to your inquiry about who has been hurt, who is it claimed by the Government has been hurt, indeed you might say who hasn't benefited by what has been done.

To go back briefly to the origin of this case, it had a strange origin in the light of subsequent developments, a man named Hornady worked under Nicht for King Features, and learned the influence of the tie-in of the features with the printing. The time came when he was sent down to Newport News or that vicinity to investigate a certain situation on behalf of King Features, at the direction of Nicht. The first thing you know, he abandoned Nicht and King Features, and went to work for the company he was supposed to investigate, Atlantic Color Printing. Knowing all the secrets of the order, in the sense the order being King Features, Hearst, he began to complain about the things that he used to do. A lawyer writes a letter threatening anti-trust activities if King Features doesn't cease and desist, no complaint about Greater Buffalo. In the course of time, Hornady goes to the Department of Justice and lodges a complaint against King Features for whom he used to work. Depositions are taken, in the course of which he testifies that he knew of no predatory or illegal action on the part of Greater Buffalo Press. The whole thrust of his complaint, the origin of this case, being against King Features. Then came that remarkable change in the attitude of the Government, and in the thrust of the case, from a complaint about King Features and its tie-in of features with the printing, and the requirement that the printing be done under its agencies if the newspapers were to get the features. Now, in the meantime, and I'm not going through the long suc-

cess story of Greater Buffalo Press, but Greater Buffalo Press from its humble origin was proceeding upward, and in the 1950's or thereabouts King Features began to feel its competition, and while I am on that subject I depart to say that Greater Buffalo Press wouldn't care today if King Features would build its own printing plant and compete, nor would it care if the other defendant did the same thing, Newspaper Enterprise, NEA, if you please. If it were a proper case and there were any basis for it, I assume that Greater Buffalo Press wouldn't care if there was an injunction saying they could not print for King Features or for NEA, but this is not such a case.

Now, what happened? Let's start with the order of things the way that the Government started. First we will discuss Section 7 of the Clayton Act, as amended, as presently enforced.

I pointed out that each case is to be decided on its own
 3581 facts. There is no formula. It is competition and not competitors, as such, Section 7 doesn't exist for the likes of King Features, it doesn't exist for the protection of wrongdoers, it exists for the protection of the victims. For years International had printed, printed for King or Hearst alone. I don't know what the right phrase is, a captive plant would be the equivalent of a division, in effect, or whether you would regard it as a printing plant; in any event, all of its facilities were devoted to the production, all of its output went to King, and King over the years ground it down, as far as price for product was concerned, and rode the tired horse to the point of exhaustion, and in 1955 International was, within the meaning of the cases, within the spirit of the law, within the letter of the opinions, a so-called failing company, a defense to which we
 3582 do not have to resort, but since it is a good and valid defense, one which has been asserted, one alluded to by them, let's see if we can't correct our friends with respect to the law.

I think Mr. Bernstein said, or one of these gentlemen said, that a company didn't come within the rule of the failing company unless it was insolvent, It is said here they were paying dividends. The payments of the dividends over the years may have contributed to the pending insolvency, the inevitable insolvency, but insolvency isn't the test. The cases are cited in our brief, Pages 103, 104 and 105, and I point out that the Court said in this case, a case very often cited, that of United

States vs. Diebold, where that acquiring company acquired a safe company, and it didn't show a deficit in working capital, its quick assets exceeded its current liabilities at the time of the acquisition, but it was deteriorating and in the course of time it was indicated it would indeed fail, and the Court was concerned with whether there were any other purchasers.

3583 In our case there was a deficit in working capital. In our case the earnings on an eight million dollar enterprise shrunk to something like seven thousand dollars for the year or thereabouts, and Gorman, who knew more about it than anybody else, could see the inevitable, and the company was offered to King Features. Nicht urged its purchase but Hearst wouldn't make the investment. It couldn't be sold to anybody. When Koessler was approached by Gorman, not by Nicht, not by King Features, he said he would purchase it or Greater Buffalo would purchase it, as it had a clear right to do, not only on the failing company theory, but it had a clear, untrammelled right to do so. What did it buy, it purchased some out of date machinery, updated it with its know-how, put money into the enterprise, carried out the obligations of International, increased employment, provided a flow of money into a community which needed it very much. If your

Honor's recollection goes back to the early days when
3584 there was fear expressed by the union people that a transfer of runs in the event of acquisition by Greater Buffalo might further depress an already depressed area. Now, I pause to say that obvious benefits flowed to the community. Now, what happened down in Sylacauga? Employment was provided and money flowed into a community which theretofore did not have either, a great benefit resulting from the opening of Sylacauga, and you could say the same thing about Lufkin, Texas.

Now, counsel has not pointed to one iota of competition which he says has been suppressed by the purchase of International. In the first place, International and Greater Buffalo were not competitors, this isn't the kind of an acquisition contemplated by the Act, that is, International didn't go out and solicit from newspapers, Koessler did, and never was it regarded that Greater Buffalo and International were in competition. Koessler or Greater Buffalo was in competition with

3585 King Features and not with International. So that it doesn't even come within the purview of Section 7, no matter how you stretch it. Now then, still on the subject of what competition has been restrained, the Government doesn't say. It seems to suggest some fugitive competition but it is unidentified. All of the companies that were in existence in 1955, at the time of the acquisition, are in business now; Eastern Color, whatever the name of it is, in New England; Atlantic Color Printing in Newport News; Acme on the Coast; Star, and the others that have been mentioned.

Now, who else has derived a benefit from what has been done, the converse of the proposition who has been hurt, and bearing in mind, as I read from the Brown Shoe case, it isn't the competitors who are to be protected by the Act, it is competition, and in the last analysis the consumer, and the consumer here are the newspaper customers of Greater Buffalo Press and these other companies. The most remarkable thing in the whole case

is the fact that the Government would be assailing 3586 Greater Buffalo Press, who hasn't raised a price in twelve or fourteen years in the face of unprecedented inflation which is engrossing everybody's attention and instilling fear everywhere. When we think what a dollar bought in 1955, when we think what labor rates were, what material costs were twelve, fifteen years ago, and how they have increased, and think of the fact that Greater Buffalo Press has not raised a price during all that period of time, and it is a remarkable thing, to use the word again, that every dollar of saving accomplished by the erection of the costly plants by Greater Buffalo Press in Lufkin and in Sylacauga have been passed on to the newspapers who favored Greater Buffalo with their business, an undisputed fact in the case.

Nobody could be serious about any claimed divestiture of Lufkin. Lufkin was conceived in 1952, three years before the acquisition, three years before the alleged conspiracy.

3587 The land was bought in 1952 or 1953, construction was started sometime in 1955, before the acquisition of International, and it was conceived and constructed and operated largely for the benefit of the saving which would result in transportation costs to the newspapers in that general vicinity, and that saving has been theirs.

Now we come to Sylacauga, and how counsel can claim that Sylacauga has any relationship to an alleged violation of Section 7, or to an alleged conspiracy, nebulous and always changing in character, I don't know. The record shows, if your Honor will recall, that as early as 1949, I think it was, Greater Buffalo was considering a plant in this general locality, in the south. Kenneth Koessler went down to places like Chattanooga and elsewhere and made investigations. The record will show that this Coosa River printing plant came to Koessler long before he had the opportunity, if such it be, to acquire International, and the plans were made for the operation of a plant in
 3588 that general vicinity. Again, you go back to the proposition that King was offered by International all the opportunities that would flow from a purchase of International or the providing of sufficient working capital to permit International to function and itself open a plant in the south.

Now, so much for the alleged violation of Section 7. As I say, there are no percentages to be applied, each case is to be decided on its own value. I don't want to leave the subject without stating unequivocally that my friends are mistaken, they were not reading from the so-called Gorman report, they were reading from a review of figures derived in part from the Gorman report by a Government lawyer or a Government agent, and I know the figures wouldn't stick in your Honor's mind if I went through them one by one now, but there is no such thing as any 75%, the percentages are in the vicinity of
 20% for Greater Buffalo Press, if you take the applicable market. Again, I am repetitious, but it sticks out
 3589 and stalks through this whole case, not only from the testimony of Hornady on the subject, and he was certainly a hostile witness, at least hostile to King, Hornady himself said, and other witnesses, experts, have told your Honor a fact that is important, that is the easy access to this market. Any newspaper can go into this business if they want to spend a little money, they have the facilities. It is only because Koessler can beat them on price with his efficiency, which counsel concedes is not a crime, that they favor him with their business.

Now, this conspiracy talk—I want to hurry along here—is so bizarre, it is so nebulous, to use the word again, that it is hard to deal with. Now, I will cheerfully concede that there was a time

when Nicht, with his enormous power born of his ownership of the features and his control over the licensing of the same, sought to extort from Koessler some sort of an agreement which might well be said to violate the anti-trust laws, and I will say that Koessler did what anybody under the circumstances would understandably do, he began to show concern, or if not show concern, he began to palter with the situation, and there were some conversations about various matters and things, a get-together between King and Greater Buffalo Press, but when the realization came to Koessler of what was really being proposed, what was really being demanded by Nicht, he would not go for it, if I might use vernacular, and his directors and himself decided they would not sign the contract, and the same was abandoned. That is some fifteen years ago, but there isn't a word anywhere that during that period of time the provisions of the proposed contract and the talked about relationship were adhered to.

Now, my friend likes to use words like "kickback", that Koessler kicked back to King and Nicht. Well, the story is very simple. In order to get the features in certain places, five in number out of three hundred, Nicht succeeded in extorting some weekly payments. When you use extortion you don't enter into a conspiracy, you become the victim of a conspiracy, and it is the wrongdoer, if any, in connection with this alleged conspiracy that my friend seems so anxious to help. Incomprehensible that the Government attorney could stand here and ask that Koessler, who has done so much good in so many communities by honest business practices, and who has benefited consumers and customers, who hasn't raised his prices in years, the hallmark of monopoly, the same lawyer who abandoned the monopoly charge on the eve of trial would now come around and in one way or the other say that you should take the Lufkin plant, you should take the Sylacauga plant, you should take the Wilkes Barre plant, and by some machinery make it possible for the principal defendant, who has skulked out of this case, to acquire the same. Never, in my more years than I like to mention out loud at the Bar, have I heard it contended by Government lawyers that the wrongdoer should become the beneficiary, and that the victim should be the one circumstanced as Greater Buffalo Press. The last time we were here, in the course of some argu-

ment, Mr. Bernstein admitted, it is in the record, that we were the victim and not the wrongdoer. Now, time heals a lot but time doesn't change the truth. What was true, what was a fact five years ago when this case was tried, two or three years ago when it was briefed, nothing has changed, and after all these years to suggest there should be a divestiture and an injunction and all the harsh sanctions imposed against Greater Buffalo Press is one of the most unjust claims that I have ever heard asserted.

I could take your Honor through, imposing upon your patience, this long story in all its detail, with every detail reflecting credit rather than obliquity on the part of Greater Buffalo Press. I refrain from doing that, it is in the printed briefs, it is in every line of the testimony, and when my friends stand
3593 here, and under your Honor's general questioning, have to admit this isn't wrong, that isn't wrong, there is nothing wrong with this, there is nothing wrong with that, but somewhere, somehow, there was a conspiracy, and after fifteen years they can point to no one who was adversely affected, let alone hurt, and one little thing—sometimes it is the straws that show the way the wind is blowing—they criticize, in connection with the purchase of International, the purchase of the press from Baltimore, which your Honor alluded to. It turns out that Greater Buffalo Press purchased half of it; and who purchased the other half? Hornady's crowd, the complainant. I don't know why we couldn't purchase half of it. I have to make this disjointed and not follow a smooth, well-organized argument because I have to answer the things that they talk about, and they are the ones to hop from pillar to post, so in an attempt to catch up to them I have to do the same thing.

3594 Now, I think I have said enough. I challenge my friends again, in all good humor, and professionally, to point out one person who has been adversely affected by anything claimed by them to have been done by Greater Buffalo Press, alone or in concert with somebody else. They can't do it. They say, 'Oh, we don't have to do that, it is the potential.' The potential that hasn't asserted itself in fifteen years must have atrophied and be pretty well dispelled. Until there is something more to answer, that is all I have to say.

* * * *

3595 Mr. BERNSTEIN: If your Honor will indulge me three minutes, I have two points. A minor point with respect

to Mr. Stevens' statement that in January 1956 the evidence shows that Greater Buffalo said to King, "You will be the exclusive seller, we the exclusive printer," therefore that proves they didn't contemplate NEA would join. I wanted to point out that the other surrounding documents show that after NEA had sold its accounts to Greater Buffalo then the succeeding documents said, "You be the exclusive seller except for the Scripps-Howard newspapers or NEA accounts." But the most important point that I wanted to make at this time was Mr. Raichle's challenge to show somebody was hurt. That is a very, very important part of the case. I agree wholeheartedly with Mr. Raichle's statement about the Brown Shoe case, that Section 7 concerns itself only with competition, not with competitors. The reason it does is because Congress decided that competition is such a basic, fundamental principle of our economic system that inherent in that is every time competition is preserved the consumers benefit, every time competition is destroyed the consumers are hurt. That is why we didn't parade witnesses to show what individual consumers or what individual competitor was hurt, it was competition that was hurt, it was competition that has been substantially lessened. That is the summary of the Government's case. Thank you very much.

3598 [Caption Omitted in Printing]

FINDINGS OF FACT

This action arises out of a complaint filed by the government in January 1961, charging certain defendants with violations of the Sherman and Clayton Acts. The complaint charged that Greater Buffalo Press, Inc. (hereinafter Greater Buffalo) engaged in a conspiracy with the Hearst Corporation (hereinafter Hearst) and Newspaper Enterprise Association, Inc. (hereinafter NEA) to restrain interstate commerce in the sale of color comic supplements by refraining from soliciting printing business from each other's customers and by maintaining and stabilizing the price of color comic supplement printing in violation of section 1 of the Sherman Act. The complaint also charged the same defendants with engaging in a conspiracy to monopolize color comic supplements in violation of section 2 of the Sherman Act, and Greater Buffalo is charged with violation of section 7 of the Clayton Act (15 U.S.C. § 18) regarding its 1955 acquisition of the outstanding stock of defend-

3599 ant International Color Printing Corporation (hereinafter International), since it is alleged that the acquisition constitutes a substantial lessening of competition and tend to create a monopoly with regard to color comic printing in the United States. Lastly, the defendants Hearst and NEA were charged with violation of section 3 of the Clayton Act (15 U.S.C. § 14), for allegedly selling comic features to newspapers at discounts on the condition that the newspaper purchasers shall not deal in comic printing services sold by their competitors. The litigation arises out of a claim filed with the Department of Justice on behalf of Atlantic Features that King Features was combining the licensing of its copyrighted features with the sale of the printing of the color comics in violation of the antitrust law.

After the complaint was filed, the defendant Hearst entered into a consent decree with the Department of Justice which in effect withdrew the charges against Hearst and provided that King Features may continue to engage in the practice of combining the sale of features and printing *until the court shall determine the antitrust issue as to Greater Buffalo*. The decree also provided that Hearst shall obey the antitrust laws during the pendency of the action. No reason has even been presented by the Department of Justice to explain the significant change of heart toward the defendant Hearst. Any attempt by the court to explain the conduct would be inappropriate in view of the court's lack of knowledge of the facts and circumstances surrounding that decision.

After the entry of the consent decree and prior to the taking of testimony, the government amended its original complaint by striking the allegation of monopoly against Greater

3690 Buffalo. There remain, therefore, conspiracy charges against NEA and Greater Buffalo under sections 1 and 2 of the Sherman Act, an alleged violation of section 7 against Greater Buffalo arising out of the International acquisition, and a violation of section 3 of the Clayton Act against NEA regarding tie-ins.

Greater Buffalo is a New York corporation with facilities in Buffalo and Batavia and is in the business of commercial printing, including color supplements and color comic supplements for insertion in newspapers, and is engaged in the production of goods for shipment in interstate commerce. South-

west Color Printing Corporation (hereinafter Southwest Color) is a Texas corporation, having its principal place of business in Lufkin, Texas. Dixie Color Printing Corporation (hereinafter Dixie Color) is an Alabama corporation with its principal place of business and facilities at Sylacauga, Alabama. Both Southwest Color and Dixie Color are wholly owned subsidiaries of Greater Buffalo.

International is a Pennsylvania corporation, having its principal place of business and facilities at Wilkes-Barre, Pennsylvania. Prior to June 1955, its sole business consisted of the printing of color comic supplements for the account of King Features Syndicate (hereinafter King), a division of Hearst. Greater Buffalo acquired all of the common capital stock on June 25, 1955, and since that time it has been engaged in the printing of color comic supplements for the account of King and both color comic supplements and commercial printing on contracts held by Greater Buffalo.

NEA is a Delaware corporation, with its principal place of business at Cleveland, Ohio, engaging in the business of licensing copyrighted newspaper features, including color comic features, to newspapers, and selling color comic supplement printing of copyrighted comic features to newspapers. Prior to 1955, NEA owned the stock of Buffalo Color Press, Inc. which owned and operated printing facilities in Buffalo, New York, and printed color comic supplements for NEA and one other newspaper. In 1955, its assets were sold to Greater Buffalo. Apart from its connection with Buffalo Color Press, NEA is not engaged in printing color comic supplements, but subcontracts such printing to other printers.

The Hearst Corporation is a Delaware Corporation with its principal place of business in the City of New York. It is engaged in the business of licensing copyrighted newspaper features, including color comic features, to newspapers through its New York division, King. It has also been engaged in the business of selling color comic supplement printing of copyrighted comic features to newspapers.

THE INDUSTRY

Color comic supplements are newsprint printed with colored ink containing reproductions of copyrighted color comic features, advertising material and other types of features. Each

supplement page receives four impressions of ink which requires an exacting job of alignment and adjustment for each impression. A great deal of skill and expertise is necessary to be proficient in the printing of such supplements, and the higher the degree of skill, the finer the end product and more desirable the supplement in appearance and readability. Necessary to this process is the use of skilled personnel and stereotype equipment and other machinery.

Some newspapers print their own comic supplements. Many more are printed by color comic printing companies. The 3602 newspapers which do not print their own color comic supplements are capable of doing so but have found it to be to their economic advantage to purchase them. There is every reason to believe that if at any time the cost of purchasing such color comic supplements exceeds the cost to the newspaper of printing them, the newspapers will do the printing themselves.

There are, therefore, three ways which a newspaper can obtain color comic supplements (hereinafter supplements):

1. Print its own supplements;
2. Contract directly with color comic printers; and
3. Contract with concerns which do not themselves print the supplements, but have arrangements with printers to print such supplements and deliver the same to newspapers.

Contemporaneously with contracting for the purchase of supplements, newspapers contract for the purchase of rights to the copyrighted comic features which appear in such supplements and, in general, the fees charged for the licensing of features are not pursuant to published price lists, but are arrived at after bargaining negotiations between the newspaper and the licensor. In attempting to obtain specific features, a newspaper is limited to those which are not already licensed under an exclusive arrangement with other newspapers in competition with it.¹

¹ The court takes judicial notice of the fact that, after the closing of testimony in this case, the Department of Justice filed a complaint in the United States District Court for the Southern District of New York in an action entitled "United States of America v. The Hearst Corporation" No. 67 Cir. 4598, which charges the Hearst Corporation with a violation of section 1 of the Sherman Act in that for the past many years it has entered into contracts through its King Features Syndicate Division with newspapers for the exclusive licensing of the features within an arbitrary and unreasonably broad territory surrounding the newspaper's city of publication.

3603 For the past many years and continuing to this day, King has ruled the licensing portion of the color comic supplement industry. It controls the licensing of at least fifty copyrighted comic features, including the most popular comic features which are used by major metropolitan newspapers. Moreover, other features such as the writing of columns, which are essential to the circulation of large metropolitan newspapers, are controlled by King. Prior to 1955, King exercised dominant control over the printing of color supplements but since that time its position in the sale of printed supplements has been challenged by independent printers as well as syndicates.

Since approximately 1926, until very recently, Greater Buffalo has been owner, operated and controlled by Walter Koessler, now deceased, together with his brother Kenneth and other members of his family. The growth of the company has been financed entirely out of earnings derived from the business. During this entire period of time, the business has grown and become a model of efficiency in the industry. This is due to the fact that Mr. Koessler personally developed the mechanical techniques for the rebuilding of color printing presses, including the system of pre-registry, which resulted in greatly increased efficiency in the operation of such presses and improvement in the quality of the product at reduced cost in printing. Walter Koessler was a mechanical genius. The improvements developed by him in the printing of color comics, although not protected by patents, have not been duplicated by any manufacturer of printing presses or any other printers and because of this Greater Buffalo has alone been able to make great strides in improving color printing presses. As a

3604 result, Greater Buffalo has at all times enjoyed a distinct competitive advantage over other printers which is a result of the skill, diligence and efficiency of Walter Koessler and not the result of any illegal agreement or design to violate and provisions of federal law. The competitive advantage enjoyed by Greater Buffalo continues to this day. Greater Buffalo, as compared with King, has no control over the ownership of features and has never engaged in their licensing. Consequently, it has never been in a position to offer the smaller newspaper a so-called "ready-print" supplement section, which is a pre-printed supplement section supplied to many newspapers with only masthead changes, thereby shar-

ing the printing among a number of newspapers which, because of the longer runs of this type of supplement, reduces to the individual newspaper the unit cost of such supplements. Both King and NEA are extensively engaged in this type of ready-print section. In recent years Greater Buffalo has obtained many contracts for the printing of color comic supplements solely by reason of its lower prices and the quality of its work. These contracts have come principally from newspapers previously engaged in printing their own supplements. The contracts provide for printing at uniform rates subject to cancellation by either party on ninety days' notice. They also provide that the transportation charges will be paid by the newspapers.

Prior to 1955 and to this day, all of the following companies, among others, have been and still are in competition with Greater Buffalo in the printing of color comic supplements, as well as the sale of such printing to newspapers and syndicates: Acme Color Printing Company, Eastern Color Printing Company, Star Color Printing Company, Southern Color
3005 Printing Company, World Color Printing Company.

There has been no evidence presented to this court which would support a conclusion that Greater Buffalo controlled such a share of the market as would tend to create a monopoly or monopoly power. In recent years the color comic supplement industry has suffered from the competition of television; the substitution of other types of supplements, such as TV Topics, printed by the newspapers themselves; and the discontinuance of the publication of large numbers of newspapers. It is not a growing industry. The discontinuance of newspapers has resulted in a surplus of printing facilities and equipment, and this, together with the existing facilities of modern newspaper plants adaptable to the printing of color comic supplements, has minimized the barriers to entry into the color comic supplement printing industry.

Examining all the testimony and the relations between the parties, the court finds that the significant lines of commerce involved in this action should be divided into two distinct and separate categories: (1) the printing of color comic supplements for newspapers which do not print their own, and (2) the printing of color comic supplements for syndicates engaged in the sale of copyrighted comic features to newspapers. These are the lines of commerce—to treat them together as one line

of commerce, i.e., the printing and sale of color comic supplements, would be to ignore the tremendous leverage of the syndicates which control the copyrighted features. The testimony of Walter Koesler and other witnesses in this case has established firmly that the syndicates, and in particular King, have a unique position by virtue of the legal monopoly which they have over the copyrighted features. The court is of the opinion that the peculiar characteristics and business uses of copyrighted features justify considering printing for syndicates as a separate product market. See *Brown Shoe Co. v. U.S.*, 370 U.S. 204, 325 (1961).

THE CHARGES OF THE COMPLAINT

The evidence² indicates that Greater Buffalo and King engaged in active competition for the business of printing color comic supplements. Because of King's control over licensing of both comic and general features, Greater Buffalo has been at a disadvantage in meeting King's competition.

In certain instances, such as the Waterloo, Iowa, incident, the power of King to withhold the licensing of comic features to newspapers, to which Greater Buffalo was supplying the color comic supplements, required Greater Buffalo to make weekly payments to King to satisfy demands of Nicht, the chief

² During this trial, the court reserved decision concerning the admissibility into evidence of certain documents offered on behalf of the government. In general, these documents are memoranda circulated between executives of King and, in some cases, are personal memoranda of Mr. Nicht of King. Some of these documents have been offered on the theory that they are statements of co-conspirators made in furtherance of and in the course of the conspiracy. Mindful that there must be independent evidence that the alleged co-conspirator was a member of a conspiracy before statements in furtherance thereof are admissible, and viewing the evidence in the light most favorable to the government—and viewing only the government's evidence, the court finds sufficient evidence to infer the alleged membership in the conspiracy which warrants the allowance of these documents into evidence. Greater Buffalo strenuously objects to the admission into evidence of both the memoranda of Nicht to his superiors and his memoranda for his personal files. Since these memoranda in the main concern events testified to by Koesler or verified as to substantial accuracy by Koesler, or in some instances concern subjects about which Greater Buffalo has offered similar exhibits (P. 77 P. 88) (Tr. pp. 1008-1010), the court admits these documents into evidence as being of some probative value concerning the state of mind of Nicht at the time the events took place. Cf. *United States v. Corn Products Refining Co.*, 234 Fed. 964-978 (S.D.N.Y. 1956), appeal dismissed on stipulation, 249 U.S. 621 (1958). See also *United States v. United Shoe Machinery*, 80 F. supp. 249, 255 (D.C. Mass. 1950).

executive officer of King. These payments were not made as the result of any agreement between Greater Buffalo and King with respect to the division or allocation of business or customers. Moreover, in some instances the newspapers themselves decided to split contracts between King and Greater Buffalo because of transportation savings which could be realized. Specifically, this was done by the Channett papers for the Ulen and Binghamton papers. Evidence that a customer has elected to divide his business for economic reasons does not establish an agreement between King and Greater Buffalo to allocate customers between them.

Between 1955 and 1958, Nicht attempted to secure an agreement restricting competition between King and Greater Buffalo. Kossler, knowing King's dominant position and its power over Greater Buffalo's customers, led Nicht to believe that Greater Buffalo was willing to negotiate such an agreement but, since Kossler was aware that such an agreement would be detrimental to Greater Buffalo, no agreement was ever reached with respect to monopolizing the printing and sale of color comic supplements, fixing prices, or allocating customers. Prior to 1955 and continuing to date, Greater Buffalo has competed with King and has obtained contracts from newspapers for printing formerly under contract with King and has been and still is in competition with NEA for the printing of color comic supplements. Greater Buffalo's competition with

NEA has been restricted, since Greater Buffalo has not been and is not engaged in the sale of ready-print sections which is NEA's principal source of business. The acquisition of the assets of Buffalo Color Press, Inc., a NEA subsidiary, by Greater Buffalo in 1955 has not affected the competition between NEA and Greater Buffalo, nor has the contract between the two for the printing of color comic supplements by Greater Buffalo for the account of NEA. Moreover, during this time King and NEA engaged in competition for the licensing of color comic printing and color comic features and the printing of color comic supplements. Greater Buffalo, printing for both concerns, received complaints from each with respect to the competition of the other and attempted to mediate such complaints. However, at no time did Greater Buffalo enter into an agreement or understanding with either with respect to allocation of customers or solicitation of each other's accounts.

Since Greater Buffalo's contracts with newspapers provided that transportation costs would be paid by the newspaper, Greater Buffalo has for many years attempted to locate and had made plans for the construction of printing plants in the deep south and southwest. This was both to accommodate its existing customers in those areas by providing lower unit cost per color comic supplement by cutting transportation costs and also to obtain new customers in those areas by providing a higher quality product at a lower unit cost. In furtherance of this policy, a printing plant was constructed in the early 1950's in Lufkin, Texas, by Southwest Color. The construction and operation of this plant was undertaken and financed entirely 3600 by Greater Buffalo, and its establishment has resulted in transportation savings to newspapers in the south-west. Some printing business subcontracted by King for printing at the Lufkin plant since 1958 has been done pursuant to an arrangement between King and Greater Buffalo on the same price schedules which are available to other customers of Greater Buffalo for Lufkin printing. The subcontracting by King affords an economic advantage to King and its customers and is not in any way dependent or contingent upon any overall agreement between King and Greater Buffalo. The operation of the Lufkin plant by Southwest Color under the direction and control of Greater Buffalo has not restrained competition in the color comic printing industry, nor has it disadvantaged any other company in the industry or tended to create a monopoly.

The establishment of a printing plant at Sylacauga by Dixie Color was in execution of plans made by Greater Buffalo in 1947 and a commitment made in 1950 to its customers in the area. Construction and operation of the plant were undertaken and financed entirely by Greater Buffalo without any contribution by any other company in the industry. The establishment of that plant has effected transportation savings to newspapers in the south and preserved competitive prices in the area over the period since its construction.

The printing business placed by King for printing at the Sylacauga plant since 1963 has been produced pursuant to an arrangement between King and Greater Buffalo on the same price schedules which are available to other customers of Greater Buffalo for Sylacauga printing and are entirely different than the price schedules that prevail for the printing of King

3610 Contracts at International. The printing business sub-contract for printing at Sylacauga offers an economic advantage to King and its customers and is not in any way dependent upon any overall agreement between King and Greater Buffalo.

International had previously investigated construction of a plant at Sylacauga and had entered into negotiations with civic groups for a plant site and with the Coosa River Paper Company for a supply of newsprint, but it had never entered into any commitment to construct such a plant because it had no means of financing it. From the evidence it appears that the major stockholders of International were in no way desirous of investing further capital for the establishment of such an operation. The civic groups and the newsprint supplier were willing to transact business with any corporation prepared to finance and construct a plant. Although Greater Buffalo may have utilized to some degree the services of International officers after its acquisition of International, the funds advanced were from earnings generated by the innovations and improvements made by Greater Buffalo in the Wilkes-Barre plant. The advances were repaid prior to the time any claim was made by the government that the Sylacauga plant was an asset of International. Construction and equipment of the Sylacauga plant were carried out at the direction of Greater Buffalo and were in no way dependent on the services of International or any of its officers or personnel. At the time its construction was undertaken, Greater Buffalo had contracts with newspapers in that area, and its construction constituted a calculated business risk which Greater Buffalo alone was willing to undertake because of the

supply of newsprint and the certainty of effecting transportation savings for Greater Buffalo newspapers in that area. The operation of that plant by Dixie Color has not restrained competition in the industry or tended to create a monopoly.

THE ACQUISITION OF INTERNATIONAL

Greater Buffalo and International have never been engaged in competition for the sale of color comic supplements to newspapers, since International has neither solicited nor held contracts with any newspapers. International's business was solely the printing of color comics for syndicates engaged in the sale of copyrighted comic features to newspapers. The acquisition

by Greater Buffalo of International in 1955 was not the result of any agreement between King and Greater Buffalo and was neither suggested, aided or abetted by King or any of its officers or employees.

In 1955, at the time of its acquisition by Greater Buffalo, the resources of International were depleted to the extent that it had a deficit in working capital of \$100,000. It had no means of securing financing for the construction of a southern printing plant and no means of modernizing its equipment. The owners of the corporation were anxious to sell the company and were continually demanding dividends in excess of the company's earnings. The owners were unwilling to invest capital toward expanding the operation of International or in any way investing in its development. The company's only customer (King) was placing some of its business with other printers, was threatening to take away more business, and was insisting on the construction of a substitute plant. The

company's contract with King was cancellable on six months' notice, and it had been unable to negotiate a new long-term contract at rates sufficient to enable it to finance improvements to other facilities and the construction of a southern plant. The company's resources were so depleted, and the prospect of its rehabilitation was so remote, that it faced the grave probability of a business failure. No other person or corporation was interested in purchasing International which was a failing company. Indeed, prior to its acquisition by Greater Buffalo, International had been offered to King, but King refused to negotiate for the purchase of the company at any price. Under these circumstances, in the light of its unwillingness to enter into a long-term contract with International at increased rates, there was nothing King could do to impede or prevent the sale of International to Greater Buffalo.

The acquisition of International by Greater Buffalo in 1955, had no reasonable probability of substantially lessening competition in the color comic supplement industry because International had no share of the market of printing color comics for newspapers and its failing financial condition foreclosed the possibility of its obtaining a share of the market and competing with Greater Buffalo. The business of King was in no way dependent upon International, since King had access to

the printing facilities of Hearst and the facilities of independent printers.

At the time Greater Buffalo purchased International, there was no agreement between King and Greater Buffalo or King and International for a long-term contract, and Greater Buffalo undertook the calculated business risk of operating International without such a contract in the belief that by the installation of its more efficient methods, it could effect savings in cost for International sufficient to attract the business of newspapers, as well as the syndicates, including King and NEA. Greater Buffalo did not acquire any additional share of the market of those engaged in printing color comics for newspapers which did not print their own by acquiring International.

Although, after the acquisition, International negotiated a long-term contract with King at substantially the same rates that had prevailed in its previous contract, that contract was not conditioned upon the acquisition of International by Greater Buffalo. The contract was negotiated by Gorman with little or no direction by Greater Buffalo. The court finds that after the acquisition Greater Buffalo vastly improved the facilities of the International plant by installing its improved methods of color printing. As a consequence of the improved methods and engineering skills of Mr. Koessler, International has operated at a profit since the acquisition and is a healthy economic unit. The acquisition by Greater Buffalo of International and its operation by Greater Buffalo over the past fifteen years have not resulted in the lessening of competition in the color comic supplement industry and, in fact, competition between Greater Buffalo, King, NEA, Southern, Acme, Eastern and the other companies engaged in the industry, has increased. Indeed, from all the evidence, it appears that the companies across the country have benefited, and that competition prevails in the industry unfettered by any agreement by any of the principals in this case.

In short, the evidence fails to factually establish the violations charged against the defendants. What meager evidence there is which points to alleged violations would, even if highly credited, be sufficient to warrant a court's exercising its discretion to order a divestiture fifteen years after the occurrence of the alleged illegal conduct.

3614 NEA AND THE ALLEGED TIE-INS CLAIMED TO HAVE
VIOLATED SECTION 3 OF THE CLAYTON ACT

The government also charges that certain syndicates have illegally used the copyrighted comics by tying in the license to use the comics with the contract for printing the supplements. Newspaper Enterprise Association, Inc. is charged in paragraph 28 of the amended complaint with violating section 3 of the Clayton Act.³ Although the court is of the opinion that, if proven, any agreement resulting in such a transaction as alleged would be a sale or contract for sale of goods or commodities encompassed within the purview of section 3, the court believes that the proof offered in this case would not support a finding of such an illegal tie-in.

The testimony and exhibits relied upon by the government in one portion of its tie-in proof, namely P-142 through P-146 and P-152 and P-153, concern negotiations which did not result in contracts with NEA for ready-print. Therefore, any price differentials which may have been reflected during
3615 these negotiations could not support a finding of a violation of section 3, but could only be used as corroborating other evidence of tie-ins. *United States v. Loew's, Inc.*, 180 F. Supp. 373, 380 (S.D.N.Y. 1960), modified on other grounds, 371 U.S. 38 (1962). Furthermore, exhibits P-149, 150 and 151 are evidence that NEA on one occasion reduced the price of the ready-print to a publisher who subscribed to its intermediate service, showing only that if a tie-in existed, it would be of printing to the intermediate service—not to copyrighted comic features. Other proof indicated that NEA refused Mr. Hornady permission to sell NEA comics as its agent because he was the representative of three of NEA's com-

³ "It shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies or other commodities, whether patented or unpatented, for use, consumption or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale or contract for sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce." 15 U.S.C. § 14 (1914).

petitors, a decision which seems eminently sensible. The government also points to a situation wherein NEA "threw in Oop" to meet competition on its contract with Ponca Oklahoma City News. Although a consummate transaction, the government failed to prove that this had a conditioning effect, and the evidence shows that Oop (Alley Oop) was already included in its make-ready. Its effect was beneficial to both the newspaper and NEA. Moreover, the evidence on all of the transactions offered in support of the tie-in charges indicates that price differentials which may exist are legitimately justified by cost considerations. In reaching this conclusion, the court has closely examined the proof concerning the ready-print process. The inclusion in ready-print of certain comics selected by NEA, which can be sold as a unit to many newspapers throughout the country, results in a spreading of fixed costs overall to newspaper customers and an economic advantage to NEA of a lower unit price than could be charged profitably if each supplement was printed separately for each newspaper. The court has also considered evidence tending to show that if any newspaper decides not to buy the printing 3616 from NEA but wants any NEA comics, those comics are sold to the newspaper at the fair market price. Since a newspaper, in purchasing the ready-print, is limited to those features which NEA has previously selected and included in the ready-print, the price differential is justified by cost considerations and benefits to both the newspaper and NEA. The court, therefore, finds that the government has failed to prove the violation of section 3 of the Clayton Act regarding Newspaper Enterprise Association, Inc. regarding alleged tie-ins.⁴

⁴ This is not to conclude that the tie-in practice is not engaged in by certain syndicates controlling the licensing of color comics. The testimony at the trial of Mr. Koessler and others indicates that King Features had for a long period of time engaged in tie-in practices, and that such tie-ins seriously affected competition between Greater Buffalo and King. In fairness, it should be pointed out that King Features was not represented by counsel during these proceedings, did not cross-examine any witnesses regarding King's alleged tie-in practices, did not present evidence on its own behalf, or in any way take part in the trial, having previously agreed to a consent decree entered on the 31st day of August 1965. The terms of that decree provided in part: "V(B). Notwithstanding the making and entry of this final judgment, the plaintiff may, if the court adjudicates that the defendant, Greater Buffalo, has violated any of the antitrust laws as charged in the complaint filed herein, seek, and the court may order, such other relief as to the consenting defendant as the court may deem necessary and appropriate to dissipate the

1. This court has jurisdiction over the subject matter of this action between the parties.

2. Greater Buffalo and NEA have not engaged in any competition and conspiracy with Hearst or each other or any other person or corporation to refrain from soliciting color comic supplement business from one another's customers and to maintain and stabilize the price of color comic supplement printing in the United States.

3. Greater Buffalo and NEA have not violated section 1 of the Sherman Act as charged in the complaint.

4. Greater Buffalo and NEA have not engaged in any competition or conspiracy with King or each other or any other person or corporation to monopolize trade and commerce in the color comic supplement industry.

5. Greater Buffalo and NEA have not violated section 2 of the Sherman Act as charged in the complaint.

6. The acquisition by Greater Buffalo of International has not resulted and will not in the future result in a substantial lessening of competition or tendency to create a monopoly with respect to the color comic supplement industry, and such acquisition by Greater Buffalo did not constitute a violation of section 7 of the Clayton Act.

7. NEA has not sold comic features to newspapers at discounts, rebates or reduced prices on the condition, agreement or understanding that such newspaper purchasers shall not deal in the color comic printing services offered or sold by any competitor or competitors.

3618 8. NEA has not violated section 3 of the Clayton Act as charged in the complaint.

9. The defendants, Greater Buffalo Press, Inc., International Color Printing Corporation, Southwest Color Printing Corporation, Dixie Color Printing Corporation and Newspaper Enter-

effect of the unlawful activities that may be found by the court, and to permit and restore competition in interstate trade and commerce in the printing and sale of color comic supplements . . ." [Emphasis added.] Since the court, as outlined in this memorandum, has not found the defendant Greater Buffalo violated any of the antitrust laws as charged, the court has no power under the terms of the judgment entered August 31, 1965, to enjoin the defendant Hearst from engaging in any tie-in practice which may be revealed by the evidence.

prise Association, Inc. are entitled to a judgment dismissing the complaint.

Enter judgment accordingly.

/s/ John O. Henderson,
JOHN O. HENDERSON,
United States District Judge.

MAY 26, 1970.

3619

[Caption Omitted in Printing]

JUDGMENT

This action came on for trial before the Court, Honorable John O. Henderson, United States District Judge, presiding, and the issues having been duly tried and a decision having been duly rendered,

It is Ordered and Adjudged that the complaint be dismissed as to defendants Greater Buffalo Press, Inc., International Color Printing Corporation, Southwest Color Printing Corporation, Dixie Color Printing Corporation and Newspaper Enterprise Association, Inc.

Dated at Buffalo, New York, this 26th day of May, 1970.

ROLAND E. LOGEL,
Clerk of Court.

3620

[Caption Omitted in Printing]

**NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES BY THE UNITED STATES
OF AMERICA**

Notice is hereby given that the United States of America, plaintiff herein, appeals to the Supreme Court of the United States from the judgment entered May 26, 1970, dismissing the complaint in this action.

LEWIS BERNSTEIN.
Attorney,
Department of Justice.

1707

321

Supreme Court of the United States

No. 821

October Term, 1970

UNITED STATES, APPELLANT

v.

GREATER BUFFALO PRESS, INC., ET AL.

*APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE WESTERN DISTRICT OF NEW
YORK*

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

JANUARY 11, 1971.

BEST COPY AVAILABLE

PUBLISHER'S NOTICE

**Material on the following frames is
the best copy available to publisher.**

232 EAST 42ND STREET
NEW YORK CITY

ALL COMMUNICATIONS MUST BE
ADDRESSED TO KING FEATURES SYNDICATE



June 5, 1940.

International Color Printing Co.,
North End Station,
Wilkes-Barre, Pa.

P-6 FOR SENT.
P-6 IN CVD.
U. T. BUREAU
OFFICIAL REPORTER
U. S. DISTRICT COURT

Gentlemen:

This is our acceptance of the terms outlined in your letter of June 1, 1940, which has the effect of extending our present printing contract with you, with the following modifications:

The second paragraph of your letter dated June 1, 1940 reads as follows:

"International Color Printing Company is to print comic supplements exclusively for King Features Syndicate while King Features Syndicate purchases from International Color Printing Company at least seventy-five (75%) per cent of its supplement printing requirements."

We think this paragraph should read as follows:

"International Color Printing Company is to print comic supplements exclusively for King Features Syndicate while King Features Syndicate purchases from International Color Printing Company at least seventy-five (75%) per cent of its supplement printing requirements, except in the event of emergencies such as the possibility of a newsprint shortage, strikes, or other plant difficulties."

Your acknowledgment of and agreement to the change proposed above will have the effect of making your letter of June 1, 1940 a binding agreement between us.

Very truly yours,

KING FEATURES SYNDICATE, Inc.

J. H. M. M. M.
President.

READY PRINT SURVEY
ALABAMA

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
ANNISTON STAR	S.C.	17,801	8 STD.	35,602
DOYAN EAGLE	B.C.P.	21,178	8 STD.	42,356
FLORENCE TRI-CITY TIMES	B.C.P.	17,108	8 STD.	34,216
MOBILE PRESS REGISTER	G.B.P.	85,005	10 STD.	212,512
SILVA TIMES JOURNAL	B.C.P.	9,815	8 TAB.	9,815
TRAY HERALD MESSENGER	NO COMIC SECTION	—	—	—
TALLADEGA DAILY HOME	G.B.P.	<u>+ 2,900</u>	8 TAB.	<u>+ 2,900</u>
SUB. TOTAL		153,807		337,401

I.C.P.

BIRMINGHAM NEWS ✓	211,270	12 STD.	633,810
DECATUR DAILY ✓	13,650	8 STD.	27,300
GADSDEN TIMES ✓ 0	21,895	8 STD.	43,790
HUNTSVILLE TIMES ✓	18,704	8 STD.	37,408
MONTGOMERY ADV. ✓	72,948	8 STD.	145,896
TUSCALOOSA NEWS ✓ 0	15,560	8 STD.	31,120
ANDREWS BY THE WAY DISPATCH	3,000	8 TAB.	3,000
SUB TOTAL	357,027		925,324
GRAND TOTAL	510,834		1,262,725

TAB PAPERS 1

100
2-

READY PRINT SURVEY
ARIZONA

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRCULATION</u>	<u>TYPE SECTION</u>	<u>CIRCULATION</u>
DOUGLAS DISPATCH	ACME	3,422	8 TAB.	3,422
PHOENIX REPUBLICAN GAZETTE	ACME	114,096	12 STD.	342,288
TUCSON CITIZEN STAR	ACME	<u>33,079</u>	12 STD. 16 TAB.	<u>165,395</u>
GRAND TOTAL		150,597		411,105

READY PRINT SURVEY
ARKANSAS

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
EL DONADO NEWS	ACME	9,973	16 TAB.	19,946
FORT SMITH TIMES REC.	THEIR OWN	31,280	8 TAB.	31,280
HELENA WEST HELENA WORLD	-----	-----	-----	-----
HOT SPRINGS SENT. REC.	ACME	13,280	16 TAB.	26,560
LITTLE ROCK ARK. DEM.	THEIR OWN	91,939	8 STD.	183,878
PINE BLUFF COMMERCIAL	G.O.P.	14,801	8 TAB.	14,801
TEXARKANA GAZETTE NEWS	ACME	<u>26,291</u>	8 TAB.	<u>26,291</u>
SUB TOTAL		187,564		302,756
	<u>I.G.P.</u>			
LITTLE ROCK ARK. GAZETTE ✓		<u>105,387</u>	10 STD.	<u>263,467</u>
SUB TOTAL		105,387		263,467
GRAND TOTAL		292,951		566,223

HEADLINE PRINT SURVEY

CALIFORNIA

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>Circ.</u>	<u>TYPE SECTION</u>	<u>Circ. IN '23</u>
FOUNTA HOUCHENS TIMES	ACME	12,422	8 TAB.	12,422
FREEDOM PRESS	ACME	10,157	12 STD.	20,471
LONG BEACH IND. PRESS	ACME	121,410	12 STD.	364,230
LOS ANGELES TIMES	THEIR OWN	787,051	14 STD.	2,756,251
LOS ANGELES EXAMINER	HEARST	671,611	14 STD.	2,350,643
OAKLAND TRIBUNE	THEIR OWN	209,491	16 STD.	819,064
PASADENA INDEPENDENT	ACME	11,501	8 TAB.	11,501
PASADENA STAR NEWS	THEIR OWN	35,795	8 STD.	71,590
RICHMOND INDEPENDENT	ACME	10,000	8 TAB.	10,000
REVERSHIDE ENTERPRISE	ACME	10,177	8 STD.	20,354
SACRAMENTO PRESS	ACME	111,813	12 STD.	401,501
SACRAMENTO UNION	ACME	47,145	24 TAB.	141,435
SAN BERNARDINO SUN TRIUMPH	ACME	48,086	8 STD.	96,172
SAN DIEGO UNION	ACME	149,516	16 STD.	308,144
SAN FRANCISCO CHRONICLE	THEIR OWN	246,568	10 STD.	615,174
SAN FRANCISCO EXAMINER	HEARST	400,000	14 STD.	1,726,811
SAN FRANCISCO VALLEY TIMES		12,044	8 STD.	27,888
SAN JOSE MERCURY NEWS	ACME	61,729	12 STD.	254,157
SANTA ANA REGISTER	ACME	14,618	12 STD.	101,908
SANTA BARBARA NEWS PRESS	ACME	21,705	8 STD.	43,510
VALLEJO TIMES HERALD	GIBSON PUL.	21,062	8 STD.	42,084
MORENO PRESS	ACME	10,105	8 STD.	60,210
CORONA INDEPENDENT	ACME	2,686	8 TAB.	5,372
SANJOSE PRESS TRIB.	THEIR OWN	28,075	8 STD.	90,155
GRAND TOTAL		5,575,822		11,016,568

READY PRINT SURVEY
COLORADO

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRCU- LATION</u>	<u>TYPE SECTION</u>	<u>CIRCU- LATION</u>
COLORADO SPRINGS GAZETTE	Acme	24,660	16 Std.	98,640
DENVER POST	THEIR OWN	350,108	12 Std.	1,050,324
ROCKY MT. NEWS	THEIR OWN	155,371	24 Tab.	466,113
DURANGO HERALD NEWS	B.C.P.	3,385	8 Tab.	3,385
FT. COLLINS COLORADOAN	W.C.	7,020	8 Tab.	7,020
GRAND JUNCTION SENTINEL	THEIR OWN	13,378	4 Std.	13,378
PUEBLO CHIEFTAIN STAR JNL.	THEIR OWN	<u>15,382</u>	16 Tab.	<u>70,754</u>
SUB TOTAL		589,304		1,709,624

L.A.E.

COLORADO SPRING FREE PRESS ✓		<u>9,403</u>	8 Std.	<u>18,806</u>
SUB TOTAL		9,403		18,806
GRAND TOTAL		598,707		1,728,430

READY PRINT SURVEY
CONNECTICUT

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRCULATION</u>	<u>TYPE SECTION</u>	<u>CIRCULATION AS</u>
BRIDGEPORT HERALD	C.P.	94,110	16 TAB.	118,220
BRIDGEPORT POST	E.C.P.	61,132	32 TAB.	244,528
HARTFORD COURANT	E.C.P.	130,826	12 STD.	392,478
NEW HAVEN REGISTER	E.C.P.	93,386	12 STD.	280,158
			8 STD.	
WATERBURY AMERICAN REPUBLICAN	E.C.P.	<u>43,857</u>	8 TAB.	<u>131,571</u>
GRAND TOTAL		423,311		1,166,955

READY PRINT SURVEY
DELAWARE

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRCULATION</u>	<u>TYPE SECTION</u>	<u>CIRCULATION</u> <u>AS</u>
WILMINGTON STAR	DISCONTINUED	—	—	—

READY PRINT SURVEY
FLORIDA

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
DAYTONA BEACH NEWS JRNL.	THEIR OWN	23,880	8 STD.	47,760
DELAND SUN NEWS	B.C.P.	4,663	8 TAB.	4,663
FORT LAUDERDALE NEWS SENT.	B.C.P.	24,406	8 STD.	48,812
FORT MYERS NEWS PRESS	B.C.P.	9,789	8 STD.	19,578
FORT PIERCE NEWS TRIBUNE	B.C.P.	6,411	8 TAB.	6,411
JACKSONVILLE TIMES UNION	THEIR OWN	148,535	12 STD.	445,605
MELBOURNE TIMES	G.B.P.	2,645	6 STD.	3,967
MIAMI NEWS	G.B.P.	97,541	14 STD.	341,358
MIAMI BEACH SUN	E.C.P.	9,325	8 TAB.	9,325
OCIA STAR BANNER	B.C.P.	7,057	8 TAB.	7,057
PANAMA CITY NEWS HERALD	B.C.P.	14,263	8 STD.	28,526
SARASOTA HERALD TRIBUNE	B.C.P.	13,388	8 STD.	26,776
TALLAHASSEE DEL.	S.C.	13,706	8 STD.	27,412
TAMPA TRIBUNE	THEIR OWN	126,666	12 STD.	379,998
WEST PALM BEACH POST TIMES	S.C.	28,798	8 STD.	57,596
ST. AUGUSTINE REC.	G.B.P.	<u>5,622</u>	4 STD.	<u>5,622</u>
SUB TOTAL		536,696		1,460,436
	<u>L.C.P.</u>			
BRADENTON HERALD ✓		10,579	8 STD.	21,158
CLEARWATER SUN ✓		9,914	8 STD.	19,828
ORTHESTEE-SUN		10,695	4 STD.	10,695
LAKELAND LEDGER ✓		15,434	8 STD.	30,868
MIAMI HERALD ✓		255,976	16 STD.	1,023,904
ORLANDO SENTINEL STAR ✓		56,977	12 STD.	170,931
PENSACOLA JOURNAL NEWS ✓		46,000	8 STD.	92,000
ST. PETERSBURG TIMES ✓		<u>52,563</u>	12 STD.	<u>178,704</u>
SUB TOTAL		464,944		1,488,321
GRAND TOTAL		1,001,640		2,948,757

READY PRINT SURVEY
GEORGIA

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
ALBANY HERALD	S.C.	19,078	8 STD.	38,156
ATLANTA JOURNAL CON.	G.B.P.	480,919	12 STD.	1,442,757
GAINESVILLE TIMES	B.C.P.	5,982	8 TAB.	5,982
ROME NEWS JOURNAL	CUNEO PRESS	<u>11,408</u>	8 TAB.	<u>11,408</u>
SUB TOTAL		517,387		1,498,303

I.C.P.

AUGUSTA CHRONICAL HERALD ✓ 0	61,235	16 STD.	244,940
COLUMBUS LEDGER INQUIRER ✓ 0	45,526		136,608
MACON TELEGRAPH NEWS ✓ 0	50,850		152,580
SAVANNAH NEWS PRESS ✓	58,686		176,058
WAYCROSS JOURNAL ✓	<u>8,000</u>	8 TAB.	<u>8,000</u>
SUB TOTAL	224,317		718,186
GRAND TOTAL	741,704		2,216,489

READY PRINT SURVEY
I D A H O

<u>PAPER</u>	<u>WHERE PRINTED.</u>	<u>CIRCULATION</u>	<u>TYPE SECTION</u>	<u>CIRCULATION IN A's</u>
BOISE STATESMAN	ADME	34,700	8 STD SAT 8 STD SUN	138,800
IDAH0 FALLS POST REGISTER	ADME	15,953	8 STD	31,906
POCATELLO IDAH0 STATE JOURNAL	ADME	10,416	8 STD	20,832
TRIN FALLS TIMES NEWS	B. C.	<u>19,629</u>	8 TAB	<u>19,629</u>
SUB TOTAL		80,698		211,167

I. C. P.

LEWISTON TRIBUNE ✓	I. C. P.	15,000	8 TAB	15,000
SUB TOTAL		<u>15,000</u>		<u>15,000</u>
GRAND TOTAL		95,698		226,167

PUBL.	WHERE PUBL.	READY PRINT SURVEY ILLINOIS		CIRCULATION IN A.M.
		CIRCULATION	TYPE SECTION	
AURORA BEACON NEWS	B. C. P.	29,918	8 TAB	29,918
CHANDLER ILLINOISIAN	W. C.	17,729	8 STD	35,458
CHAMPAIGN URBAIN OREN	W. C.	24,827	8 STD	49,654
CHICAGO HERALD AMER. HEARST	HEARST	753,122	14 STD	2,635,927
CHICAGO DLY NEWS	B. C. P.	572,556	16 TAB	1,145,112
CHICAGO SUN TIMES	B. B. P.	573,327	20 TAB	1,443,317
CHICAGO TRIBUNE	OWN	1,392,384	10 STD	3,480,950
DECATUR HERALD REVIEW	W.C.	53,541	8 STD	107,081
EAST ST. LOUIS JRN.	W.C.	30,086	8 STD	60,172
JOLIET HERALD NEWS	B.C.P.	33,482	8 TAB	33,482
KANKAKEE JOURNAL	B.C.P.	23,311	8 TAB	23,311
SPRINGFIELD SUN JRN.	W.C.	65,138	16 TAB	130,216
SUB TOTAL		3,569,401		9,131,941

I. C. P.

BLOOMINGTON PANTAGRAPH ✓	I. C.	33,215	4 STD	33,215
CHAMPAIGN NEWS GAZETTE ✓	I. C.	29,808	8 STD	59,616
DECATUR COMMERCIAL NEWS ✓	I. C.	34,237	8 STD	68,474
PEORIA JOURNAL STAR ✓	I. C.	85,719	16 STD	358,876
ROCKFORD STAR ✓	I. C.	52,645	8 STD	135,290
SUB TOTAL		249,624		655,471
CORY, POST HERALD 0 100				
GRAND TOTAL		3,819,025		9,787,412

READY PRINT SURVEY
INDIANA

PAPER	WHERE PRINTED	CIRCULATION	TYPE SECT.	CIRCULATION IN 4's
EVANSVILLE COURIER	B.C.P.	89,316	16 STD	357,344
HAMMOND TIMES	B.C.P.	49,143	8 STD.	98,286
HUNTINGTON HERALD PRESS	B.C.P.	8,441	8 TAB	8,441
INDIANAPOLIS STAR	G.B.P.	295,022	12 STD	1,180,088
INDIANAPOLIS TIMES	B.C.P.	98,673	12 STD	296,019
KOKOMO TRIBUNE	B.C.P.	20,522	8 TAB	20,522
MUNCIE STAR	G.B.P.	29,653	14 STD	103,980
SOUTH BEND TRIBUNE	OWN	111,358	16 STD	445,253
FORT WAYNE JOURNAL GAZ.	G.B.P.	<u>890,000</u>	12 STD	<u>270,000</u>
SUB TOTAL		792,328		2,780,358
I. C. P.				
FORT WAYNE NEWS SENTINEL ✓	I. C. P.	90,557	8 STD	181,114
MARION CHRONICLE ✓	I. C. P.	19,989	4 STD	19,989
NEW ALBANY LEDGER ✓	I. C. P.	6,697	8 TAB	6,697
TERRE HAUTE TRIBUNE ✓	I. C. P.	<u>46,700</u>	4 STD	<u>46,700</u>
SUB TOTAL		163,943		254,502
GRAND TOTAL		956,273		3,034,860

READY PRINT SURVEY
IOWA

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN A's</u>
COUNCIL BLUFFS NON PARELL	B.C.P	29,296	16 TAB	58,588
DES MOINES REGISTER TRIBUNE	THEIR OWN	521,152	10 STD.	1,302,380
DUBUQUE TELEGRAPH HERALD	G.B.P.	39,636	6 STD.	59,454
SIOUX CITY JOURNAL	G.B.P.	63,993	10 STD.	159,932
SPENCER TIMES	N.E.A.	6,134	8 TAB.	6,134
WATERLOO COURIER	G.B.P.	<u>48,953</u>	6 STD.	<u>73,429</u>
SUB TOTAL		709,142		1,659,917
	I.C.P.			
CEGAR RAPIDS GAZETTE ✓ ○		59,809	6 STD.	89,713
DAVENPORT DEM. ✓		<u>37,386</u>	8 STD.	<u>76,772</u>
SUB TOTAL		97,195		166,485
GRAND TOTAL		806,677		1,824,402

READY PRINT SURVEY
KANSAS

PAVER	WHERE PRINTED	CIR.	TYPE SECTION	Circ. in U.
ARKANSAS CITY TRAVELER	B. C. P.	6,375	8 TAB.	6,375
ATCHINSON GLOBE	ADME	7,024	8 TAB.	7,024
COFFEYVILLE JOURNAL	ADME	10,112	16 TAB.	10,224
CHEAT DEMO TRIBUNE	THEIR OWN	8,599	4 STD.	8,599
INDEPENDENT REPORTER	ADME	5,816	8 TAB.	5,816
KANSAS CITY KANSAN	W. C.	28,185	8 STD.	56,370
PARSONS SUN	ADME	9,347	8 TAB.	9,347
PITTSBURG HEADLIGHT & SUN		13,500	8 TAB.	13,500
GOODLAND NEWS	G. B. P.	<u>2,700</u>	8 TAB.	<u>2,700</u>
SUB TOTAL		91,658		129,955
	L. G. R.			
HAYS NEWS ✓		6,321	8 TAB.	6,321
HUTCHINSON NEWS HERALD ✓		54,067	8 STD.	108,134
SALINA JOURNAL ✓		24,831	8 STD.	49,662
TOPEKA DAILY CAPITAL ✓ 0		63,446	8 STD.	136,892
WICHITA BEACON ✓		139,279	12 STD.	417,837
WICHITA EAGLE ✓ 0		<u>117,221</u>	8 STD.	<u>234,442</u>
SUB TOTAL		405,167		953,292
GRAND TOTAL		496,825		1,083,247

READY PRINT SURVEY
KENTUCKY

<u>PAPER</u>	WHERE <u>PRINTED</u>	<u>CIRCULATION</u>	<u>TYPE SECTION</u>	<u>CIRCULATION</u> <u>AS</u>
CORBIN TIMES	B.C.P.	4,341	8 TAB.	4,341
FRANKFORD STATE JOURNAL	B.C.P.	5,667	8 TAB.	5,667
HARLAN ENTERPRISE	B.C.P.	5,793	8 TAB.	5,793
HENDERSON GLEANER JOURNAL	B.B.P.	6,574	8 TAB.	6,574
LOUISVILLE COURIER TIMES	G.B.P.	308,325	8 STD.	616,650
OWENSBORO MESSENGER	THEIR OWN	<u>—</u>	<u>—</u>	<u>—</u>
SUB TOTAL		330,700		639,025

L.C.P.CO.

ASHLAND INDEPENDENT ✓	16,995	16 TAB.	33,990
BOWLING GREEN PARK CITY NEWS ✓	10,281	8 TAB.	10,281
DANVILLE ADVOCATE ✓	3,675	8 TAB.	3,675
LEXINGTON HERALD LEADER ✓	52,664	8 STD.	105,328
PADUOH SUN DEMOCRAT ✓	<u>28,432</u>	8 TAB.	<u>28,432</u>
SUB TOTAL	112,054		181,713

GRAND TOTAL	442,754		819,738
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READY PRINT SURVEY
LOUISIANA

PAPER	WHERE PRINTED	CIRC.	TYPE SECTION	Circ. UL. 6/8
BATON ROUGE ADVOCATE	V.C.	43,352	12 STD.	130,059
BODALUBA NEWS	B.B.P.	5,399	8 TAB.	5,399
NEW ORLEANS T. PICTORIAL	THEIR OWN	276,665	12 STD.	828,795
NEW ORLEANS STATES	THEIR OWN	88,803	8 STD.	176,606
OPELOUSAS WORLD	HOME	<u>8,573</u>	8 TAB.	<u>8,573</u>
SUB TOTAL		422,792		1,032,632

L.S.E.

LAKE CHARLES AMERICAN PRESS ✓	22,699	8 STD.	45,398
MONROE WORLD ✓	32,025	8 STD.	64,050
NEW ORLEANS TRIBUNE	107,691	8 STD.	215,382
SHREVEPORT TIMES ✓	<u>95,190</u>	12 STD.	<u>215,570</u>
SUB TOTAL	257,605		510,400
GRAND TOTAL	679,998		1,542,932

READY PRINT SURVEY
MAINE

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRCULATION</u>	<u>TYPE SECTION</u>	<u>CIRCULATION</u>
BANGOR NEWS	E.C.P.	<u>73,399</u>	B STD.	<u>147,198</u>
SUB TOTAL		73,399		147,198
	<u>L.C.P.CO.</u>			
PORTLAND SUN TELEGRAM ✓		<u>103,000</u>	12 STD.	<u>309,000</u>
SUB TOTAL		103,000		309,000
GRAND TOTAL		176,399		456,198

READY PRINT SURVEY
MARYLAND

NAME	WHERE PRINTED	CIRCULATION	TYPE SECTION	CIRCULATION 6
BALTIMORE AMERICAN	THEIR OWN	321,469	14 STD.	1,445,941
BALTIMORE SUN	G.B.P.	<u>308,362</u>	8 STD. 12 TAB.	<u>1,072,391</u>
SUB TOTAL		630,038		2,523,132
	<u>J.C.P.CO.</u>			
CUMBERLAND SUN TIMES ✓ C		<u>29,516</u>	12 STD.	<u>88,548</u>
SUB TOTAL		29,516		88,548
GRAND TOTAL		659,554		2,613,680

READY PRINT SURVEY
MASSACHUSETTS

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRCULATION</u>	<u>TYPE SECTION</u>	<u>CIRCULATION A^o</u>
BOSTON GLOBE	G.B.P.	365,730	10 STD.	914,323
BOSTON HERALD TRAVELER	E.C.P.	248,071	8 STD.	496,142
BOSTON POST	G.B.P.	230,930	10 STD.	567,315
BOSTON SUN ADVERTISER	HEARST	547,691	12 STD.	1,643,073
LOWELL SUN	E.C.P.	27,569	8 STD.	55,138
SPRINGFIELD SUN REPUBLICAN	THEIR OWN	106,753	12 STD.	320,259
BOROUGHSTON TELEGRAM	E.C.P.	<u>101,000</u>	12 STD.	<u>312,000</u>
SUB TOTAL		1,630,744		4,308,252
	<u>L.C.P.CO.</u>			
LYNN TELEGRAM NEWS ✓		22,436	4 STD.	22,436
NEW BEDFORD STANDARD TIMES ✓		<u>30,824</u>	8 STD.	<u>101,648</u>
SUB TOTAL		73,260		124,084
GRAND TOTAL		1,704,004		4,432,336

READY PRINT SURVEY
MICHIGAN

<u>PAPER</u>	<u>PHONE</u> <u>PRINTED</u>	<u>CIRCULATION</u>	<u>TYPE</u> <u>SECTION</u>	<u>CIRCULATION</u> <u>A³</u>
DETROIT FREE PRESS	G.B.P.	508,000	12 STD.	1,524,000
DETROIT NEWS	G.B.P.	574,000	12 STD.	1,722,000
DETROIT TIMES	HEATSEY	<u>528,000</u>	12 STD.	<u>1,584,000</u>
SUB TOTAL		1,610,000		4,830,000

I.C.P.CO.

GRAND RAPIDS HERALD ✓		<u>79,000</u>	16 STD.	<u>216,000</u>
SUB TOTAL		79,000		216,000
GRAND TOTAL		1,689,000		5,146,000

READY PRINT SURVEY

MINNESOTA

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 419</u>
ALBERT LEA TRIBUNE	THEIR OWN	9,356	4 STD.	9,356
DAVOTH NEWS TRIBUNE	G.B.P.	71,059	10 STD.	177,647
MINNEAPOLIS STAR TRIBUNE	THEIR OWN	621,772	12 STD.	1,865,376
ST. PAUL PIONEER PRESS	G.B.P.	<u>177,183</u>	10 STD.	<u>433,257</u>
SUB TOTAL.		875,390		2,485,636
GRAND TOTAL.		875,390		2,485,636

HEAVY MINE SURVEY
LABORERS

NAME	TIME STARTED	TIME STOPPED	TYPE SCHEDULE	TIME IN A.M.
JOHN E. HENRIKSEN	8:15 P.	9,27	8 TAN.	9,27
WILLIAM HENRIKSEN	10:00 AM	10,25	6 TAN.	10,25
RAYMOND HENRIKSEN	8:00 AM	9,25	8 TAN.	9,25
TOTAL TOTAL		31,24		31,24

LABORERS

JOHN E. HENRIKSEN ✓	11,63	8 TAN.	11,63
NATHAN HENRIKSEN ✓	9,54	8 TAN.	9,54
JOHN E. HENRIKSEN ✓	10,00	8 TAN.	10,00
WILLIAM HENRIKSEN ✓	12,00	8 TAN.	12,00
RAYMOND HENRIKSEN ✓	9,00	8 TAN.	9,00
JOHN E. HENRIKSEN ✓	11,00	16 TAN.	11,00
TOTAL TOTAL	15,17		15,17
TOTAL TOTAL	106,41		106,41

DEATH PRINT SURVEY

MISSOURI

<u>PAGE</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4'S</u>
INDEPENDENCE NEWS	THE IN. C. M.	865	8 STD.	1,730
JEFFERSON CITY POST TRIBUNE	THE IN. C. M.	17,505	4 STD.	17,505
KANSAS CITY STAR	C. B. P.	561,507	12 STD.	1,084,507
ST. LOUIS GLOBE DEM.	C. B. P.	754,754	12 STD.	1,087,064
ST. LOUIS POST DISPATCH	THE IN. C. M.	477,618	12 STD.	1,420,548
SPRINGFIELD NEWS LEADER	W. C.	57,107	8 STD.	114,618
SUB TOTAL		1,261,154		3,628,274
W. C. P.				
JOHN G. GLOVE ✓		14,815	8 STD.	67,630
ST. JOSEPH EVEN PRESS ✓		50,217	8 STD.	117,426
		65,032		170,056
GRAND TOTAL		1,326,186		3,868,330

DEADY PRINT SURVEY
MONTANA

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
BILLINGS GAZETTE	THEIR OWN	35,332	10 STD.	88,330
BOZEMAN CHRONICLE	G.B.P.	4,777	8 TAB.	4,777
BUTTE STANDARD POST	ACME	25,079	8 STD.	50,158
GREAT FALLS TRIBUNE	THEIR OWN	36,200	8 TAB.	36,200
HELENA INDEPENDENT	ACME	7,856	8 STD.	15,712
KALISPELL INTER LAKE	NEA	6,079	8 TAB.	6,079
LEWISTOWN NEWS	B.C.P.	5,000	8 TAB.	5,000
MILES CITY STAR	B.C.P.	4,582	8 TAB.	4,582
MISSOULA SENTINEL	THEIR OWN	<u>16,495</u>	8 STD.	<u>22,990</u>
SUB TOTAL		141,400		243,828
GRAND TOTAL		141,400		243,828

READY PRINT SURVEY
NEBRASKA

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. 1948</u>
BEATRICE SUN	W.C.	9,981	8 TAB.	9,981
GRAND ISLAND INDEPENDENT	W.C.	18,741	8 TAB.	18,741
LINCOLN JOURNAL STAR	THEIR OWN	49,293	12 STD.	147,879
OMAHA WORLD HERALD	THEIR OWN	<u>361,266</u>	12 STD.	<u>783,738</u>
SUB TOTAL		399,281		960,339
GRAND TOTAL		399,281		960,339

READY PRINT SURVEY
NEVADA

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
ELY TIMES	ACME	2,225	8 TAB.	2,225
LAS VEGAS REVIEW JRN.	ACME	19,232	12 STD.	57,697
LAS VEGAS SUN	ACME	11,348	16 TAB.	22,696
RENO STATE JOURNAL	ACME	<u>18,110</u>	8 STD.	<u>36,620</u>
SUB TOTAL		51,095		115,238
GRAND TOTAL		51,095		115,238

FEATY PRINT SURVEY

NEW HAMPSHIRE

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4'S</u>
MANCHESTER SUN	E.C.P.	34,617	8 STD.	69,234
		<hr/>		<hr/>
SUB TOTAL		34,617		69,234
		<hr/>		<hr/>
GRAND TOTAL		34,617		69,234

BLANK POINT SURVEY

NEW JERSEY

NAME	Where Printed	Circs.	Type Section	Circs. in All
Asbury Park Press	E.O.P.	26,000	8 STD.	52,000
Atlantic City Press	E.O.P.	26,867	16 Tan	53,734
Newark News	E.O.P.	288,382	10 STD.	720,955
New Brunswick Home News	E.O.P.	24,215	16 Tan	56,470
Passaic Sun Eagle		6,400	8 Tan	6,400
Paterson Sun Eagle		15,000	8 Tan	15,000
SUB TOTAL		701,664		905,559
	E.O.P.			
Newark Star Leader ✓		207,328	12 STD.	601,004
Thompson Press		64,964	8 STD.	194,884
SUB TOTAL		361,092		1,026,506
GRAND TOTAL		755,773		1,932,065

REASSIGNMENT SURVEY
NEW EXHIBIT

<u>PAPER</u>	<u>TYPE</u> <u>PRINTED</u>	<u>DATE</u>	<u>TYPE</u> <u>REASSIGNED</u>	<u>CIRCUIT</u> <u>AN. A. A.</u>
ALBUQUERQUE JOURNAL	Color	46,371	12 wtd.	139,117
CARLETON CURRENT JOURNAL	H.C.P.	8,625	8 TAN.	8,625
CLAYTON JOURNAL	Color	7,619	16 TAN.	16, 238
FARMINGTON TIMES	Color	3,825	8 TAN.	3,825
GALLUP INDEPENDENT	H.C.P.	3,477	8 TAN.	3,477
HOBBS NEWS & SUN	Color	7,750	8 TAN.	7,750
PORTALES NEWS	Color	3,077	8 TAN.	3,077
ROSEMONT RECORD	H.C.P.	7,766	8 TAN.	7,766
SANTA FE NEW MEXICAN	Color	<u>11,465</u>	8 TAN.	<u>11,465</u>
SUB TOTAL		102,378		207,197

Los Alamos

LOS ALAMOS SUN NEWS ✓		3,709	8 TAN.	3,709
SILVER CITY PRESS ✓		<u>2,600</u>	8 TAN.	<u>2,600</u>
SUB TOTAL		7,309		7,309
GRAND TOTAL		109,687		214,506

HEAVY PAPER SHOEY NEW YORK

NAME	WHERE ENTERED	Q. 1886	TYPE SUBSTANTIAL	Q. 1886
ALBANY TIMES UNION	HEAVY	110,000	12 5/16	340,190
BUFFALO MORNING EXPRESS	Q. 18 1/2	275,000	12 5/16	1,007,600
ELMHURST SUN TELEGRAPH	HEAVY 18 1/2	60,440	12 5/16	140,200
BROOKLYN EAGLE	HEAVY 18 1/2	164,000	12 5/16	320,450
NEW YORK HERALD TRIBUNE	Q. 18 1/2	900,000	12 5/16	792,000
NEW YORK JOURNAL AMERICAN	HEAVY	000,000	12 5/16	2,011,000
LA TRIBUNA	ENTIRE 18 1/2	12,000	12 5/16	12,000
NEW YORK SUN NEWS	HEAVY 18 1/2	2,000,000	12 5/16	2,000,000
NEW YORK POST	Q. 18 1/2	277,000	12 5/16	1,10,700
ROCHESTER NEW YORKER	Q. 18 1/2	30,000	12 5/16	40,000
ROCHESTER DEL. & COMMERCE	Q. 18 1/2	123,719	12 5/16	272,400
SYRACUSE JOURNAL AMERICAN	Q. 18 1/2	221,296	12 5/16	600,000
SYRACUSE POST STANDARD	Q. 18 1/2	101,256	12 5/16	305,000
UTICA OBSERVER	Q. 18 1/2	122,760	12 5/16	130,000
SUB TOTAL		6,272,579		13,104,000

1886

BIRMINGHAM PRESS ✓ 1/2	01,000	12 5/16	207,000
JAMAICA LONG ISLAND PRESS ✓ 0	200,000	12 5/16	600,000
NEW YORK HERALD ✓ 0	1,579,210	12 5/16	1,100,000
GARDEN CITY NEWS DAY - -	222,000	12 5/16	222,000
SUB TOTAL	1,802,210		1,929,000
GRAND TOTAL	8,074,789		15,033,000

17:10

HEAVY TRUCK SURVEY

1941-1942

NAME	ADDRESS	DATE	TYPE	AMOUNT
DUNEDIN TIRE SHOP	541	15,100	8 min.	3,250
CHARLOTTE TIRE	1000 1000	69,014	8 min.	69,014
CONCORD TIRE	541	8,585	8 min.	8,585
FAYETTEVILLE OVERVIEW	541	23,123	8 min.	45,000
ASTORIA GASTON	541	19,147	8 min.	38,000
GREENSBORO TIRE	541	28,000	12 min.	35,000
HIGH POINT TIRE	541	21,000	8 min.	42,000
RALEIGH TIRE	541	2,000	8 min.	4,000
ROCKY MOUNTAIN	541	13,544	8 min.	27,000
SALISBURY TIRE	541	17,000	8 min.	34,000
SUB TOTAL		271,000		542,000

J. J. J.

ASHVILLE TIRE SHOP ✓	52,000	8 min.	104,000
CHARLOTTE OVERVIEW ✓	145,100	12 min.	435,000
DURHAM TIRE ✓	28,000	8 min.	56,000
ELIZABETH CITY TIRE ✓	7,000	8 min.	14,000
FAYETTEVILLE TIRE ✓	4,000	8 min.	8,000
KANAWHA TIRE ✓	10,000	8 min.	20,000
RALEIGH TIRE & OVERVIEW ✓	12,000	10 min.	24,000
RALEIGH TIRE ✓	15,000	8 min.	30,000
SALISBURY TIRE ✓	28,000	8 min.	56,000
SOMERSET CITY ✓	5,000	8 min.	10,000
SOMERSET CITY ✓	10,000	12 min.	20,000
SUB TOTAL	302,000		704,000
GRAND TOTAL	573,000		1,246,000

1740

READY PRINT SURVEY

NORTH DAKOTA

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
FARGO FORUM	G.B.P.	50,845	10 STD.	122,112
SUB TOTAL		<hr/> 50,845		<hr/> 122,112
	I.C.P.			
GRAND FORKS HERALD ✓		34,250	8 STD.	68,500
SUB TOTAL		<hr/> 34,250		<hr/> 68,500
GRAND TOTAL		<hr/> 85,095		<hr/> 190,612

READY PRINT SURVEY
OHIO

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
CAMBRIDGE JEFFERSONISON	G.B.P.	13,825	8 TAB.	13,825
CINCINNATI ENQU.	G.D.P. DUNKIRK	282,550	12 STD.	647,650
CLEVELAND PLAIN DEALER	G.D.P.	513,207	12 STD.	1,539,621
COLUMBUS CITIZEN	B.C.P.	104,943	12 STD.	314,829
COLUMBUS DISPATCH	G.B.P.	230,366	12 STD.	691,098
COLUMBUS STAR	G.B.P.	75,000	12 TAB.	112,000
CORNOCKTON TRIBUNE	THEIR OWN	10,305	4 STD.	10,305
ELYRIA CHRONICLE	B.C.P.	19,415	8 TAB.	19,415
LORAIN JOURNAL T. HERALD	G.B.P.	22,644	8 TAB.	22,644
MANFIELD NEWS & JRNL.	G.B.P.	31,872	8 TAB.	31,872
TOLEDO BLADE TIMES	G.B.P.	166,660	14 STD.	583,310
YOUNGSTOWN VINDICATOR	G.B.P.	139,230	12 STD.	417,660
ZANESVILLE TIMES SIGNAL	B.C.P.	20,636	8 STD.	41,272
DAYTON JOURNAL HERALD	G.B.P.	<u>97,750</u>	8 STD.	<u>195,500</u>
SUB TOTAL		1,728,403		4,841,001
	<u>I.C.P.</u>			
ANDON BEACON JOURNAL ✓		159,201	16 STD.	636,804
ATHENA MESSENGER ✓		19,194	8 STD.	38,388
CANTON REPOSITORY ✓		70,645	8 STD.	141,290
DAYTON NEWS ✓		168,128	12 STD.	504,384
IRONTON TRIBUNE ✓		9,437	8 STD.	18,874
LIMA NEWS ✓		35,977	8 STD.	71,954
MIDDLETOWN NEWS JOURNAL ✓		19,037	4 STD.	19,037
SPRINGFIELD NEWS SUN ✓		<u>38,182</u>	8 STD.	<u>76,364</u>
SUB TOTAL		519,801		1,505,995
GRAND TOTAL		2,248,204		6,347,996

READY PRINT SURVEY
OKLAHOMA

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
ADA NEWS	D.C.P.	9,093	8 TAB.	9,093
BARTTTSVILLE EXAMINER	SOUTHWESTERN PRESS	9,492	8 TAB.	9,492
CHICKASHA EXPRESS	D.C.P.	6,135	8 TAB.	6,135
CLINTON NEWS	ACME	4,967	8 TAB.	4,967
CUSHING CITIZEN	ACME	4,398	8 TAB.	4,398
DUNCAN BANNER	ACME	9,431	16 TAB.	18,862
DURANT DEM.	ACME	6,653	8 TAB.	6,653
ELK CITY NEWS	ACME	4,888	8 TAB.	4,888
ENID NEWS	THEIR OWN	19,900	4 UTD.	19,900
GUTHRIE LEADER	ACME	5,176	8 TAB.	5,176
GUYMON HERALD	ACME	3,346	8 TAB.	3,346
HENRYETTA FREE LANCE	THEIR OWN	3,998	8 TAB.	3,998
HOBART DEM. CHIEF				
LAWTON CONSTITUTION PRESS	ACME	16,586	16 TAB.	33,136
MUSKOGEE TIMES DEM.	THEIR OWN	15,255	16 TAB.	30,510
NORMAN TRANSCRIPT	D.C.P.	6,363	8 TAB.	6,363
OKLAHOMA CITY OKLAHOMAN	THEIR OWN	264,993	12 STD.	793,779
OKMULGEE TIMES	FORT SMITH	6,997	8 TAB.	6,997
PONCA CITY NEWS	D.C.P.	11,213	8 TAB.	11,213
SAYRE HEADLIGHT JRNL.	ACME	2,884	8 TAB.	2,884
SEMINOLE PRODUCER	ACME	5,051	8 TAB.	5,051
SHAWNEE STAR	W.C.	11,664	8 TAB.	11,664
STILLWATER NEWS PRESS	THEIR OWN	<u>7,387</u>	8 UTD.	<u>14,774</u>
SUB TOTAL		435,470		1,013,279
	<u>D.C.P.</u>			
TULSA WORLD VO		<u>145,258</u>	16 STD.	<u>581,032</u>
SUB TOTAL		145,258		581,032
GRAND TOTAL		580,728		1,594,311

READY PRINT SURVEY

OREGON

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
EUGENE REGISTER GUARD		31,618	8 TAB.	31,618
OREGON CITY ENTERPRISE	U.F.	8,411	8 TAB	8,411
PORTLAND OREGONIAN	THEIR OWN	224,216	16 STD.	1,176,864
PORTLAND JOURNAL	THEIR OWN	214,380	16 STD.	857,520
SALEM OREGON STATESMAN	ACME	17,564	8 TAB	17,564
THE DALLAS CHRONICLE	ACME	4,414	8 TAB	4,414
 SUB TOTAL		<u>570,203</u>		<u>2,096,391</u>
 GRAND TOTAL		<u>570,203</u>		<u>2,091,391</u>

READY PRINT SURVEY
PENNA.

PAVER	WHERE PRINTED	CIRC.	TYPE SECTION	Circ. IN AL
ALLENTOWN CALL CHRONICLE	G.B.P.	65,097	12 STD.	195,291
ERIE DISPATCH	G.B.P.	44,905	12 STD.	134,715
ERIE TIMES	G.B.P.	40,169	12 STD.	120,507
LANGASTER SUN NEWS	G.B.P.	67,599	14 STD.	236,835
PHILADELPHIA BULLETIN	THEIR OWN	699,777	24 STD.	4,198,662
PHILADELPHIA INQUIRER	THEIR OWN	1,146,321	16 STD.	4,575,284
PITTSBURG PRESS	THEIR OWN	472,103	16 STD.	1,888,412
UNIONTOWN EVENING STANDARD	G.B.P.	19,000	8 TAB.	19,000
UNIONTOWN MORNING HERALD	G.B.P.	<u>11,000</u>	8 TAB.	<u>11,000</u>
SUB TOTAL		2,965,953		11,379,447

L.C.P.

HARRISBURG PATRIOT NEWS ✓ O	114,583	12 STD.	343,749
PITTSBURGH SUN TELEGRAPH ✓ —	453,000	20 TAB.	1,132,500
READING EAGLE ✓ O	59,000	8 STD.	472,000
SCRANTON SCRANTONIAN ✓	48,531	8 STD.	97,062
WILKES BARRE INDEPENDENT ✓	46,840	4 STD.	46,840
PHILADELPHIA MAYFAIR TIMES ✓ Mc KESSPENT Daily ✓ ALL'S ✓	<u>17,000</u>	8 STD.	<u>16,000</u>
SUB TOTAL	738,854		2,126,151
GRAND TOTAL	3,304,807		13,505,598

READY PRINT SURVEY
BYDIE ISLAND

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
PROVIDENCE JOURNAL	E.P.C.	179,065	10 STD.	447,562
SUB TOTAL		179,065		447,562
GRAND TOTAL		179,065		447,562

READY PRINT SURVEY
SOUTH CAROLINA

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>Circ. Jul 49</u>
FLORENCE NEWS	S.C.	14,140	8 STD.	25,200
SUB TOTAL		14,140		25,200

L.C.S.

ANDERSON INDEPEND MAIL ✓		42,170	8 STD.	84,340
CHARLESTON NEWS & COURIER ✓		60,533	8 STD.	121,066
COLUMBIA STATE ✓		83,108	12 STD.	249,324
GREENVILLE NEWS ✓		78,845	12 STD.	236,535
GRANDEBORG TIMES & DEM. ✓		5,796	8 STD.	11,592
SPARTANBURG HERALD JOURNAL ✓ O		37,903	8 STD.	75,806
CHARLESTON EVENING POST ✓		<u>31,500</u>	4 STD.	<u>31,500</u>
SUB TOTAL		339,852		847,137
GRAND TOTAL		354,002		847,417

READY PRINT SURVEY
SOUTH DAKOTA

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 1919</u>
HURON HURONITE PLATSMAN	G.C.P.	11,610	8 STD.	23,220
SIOUX FALLS ARGUS LEADER	G.C.P.	<u>51,053</u>	10 STD.	<u>127,362</u>
SUB TOTAL		62,663		150,582
	<u>I.C.P.</u>			
ABERDEEN AMERICAN NEWS ✓		20,201	8 STD.	40,400
RAPID CITY JOURNAL ✓ D		24,319	8 STD.	48,638
WATERTOWN PUBLIC OPINION ✓		<u>12,268</u>	8 TAB.	<u>12,268</u>
SUB TOTAL		56,768		101,286
GRAND TOTAL		119,431		251,868

READY PRINT SURVEY
 TENNESSEE

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
ELIZABETHAN STAR	D.C.P.	5,802	8 TAB.	5,802
JOHNSON CITY PRESS	S.C.	19,307	8 STD.	38,614
KNOXVILLE SENTINEL	D.C.P.	108,872	12 STD.	326,616
MEMPHIS COMMERCIAL APPEAL	THEIR OWN	251,361	12 STD.	754,083
MORRISTOWN GAZETTE MAIL	G.D.P.	4,661	8 TAB.	4,661
NASHVILLE TENNESSEAN	G.D.P.	<u>191,360</u>	10 STD.	<u>478,390</u>
SUB TOTAL		581,343		1,608,126
	<u>L.C.P.</u>			
BRISTOL HERALD ✓ 0		23,879	8 STD.	47,798
CHATTANOOGA TIMES ✓ 0		88,764	12 STD.	266,292
JACKSON SUN ✓ 0		15,130	8 STD.	30,260
KINGSPORT TIMES ✓ 0		20,561	12 STD.	61,683
KNOXVILLE JOURNAL ✓		88,456	12 STD.	265,368
GREENVILLE DAILY SUN ✓		<u>12,000</u>	4 STD.	<u>12,000</u>
SUB TOTAL		348,790		683,401
GRAND TOTAL		930,133		2,291,527

READY PRINT SURVEY
T. 245

PAPER	WHERE COLLECTED	CIRC.	TYPE SECTION	CIRC. IN 1919
ALICE ECHO	ACME	5,491	8 TAB.	5,491
AMARILLO NEWS GLOBE	ACME	58,649	12 STD.	176,047
BEAUMONT ENTERPRISE	THEIR OWN	71,394	16 STD.	285,776
BONHAM FAVORITE	ACME	4,577	8 TAB.	4,577
BROWNSHERO HERALD	G.O.P.	10,369	8 STD.	20,738
BRECKENRIDGE AMERICAN				
BRENNAN BANNER	ACME	5,578	8 TAB.	5,578
BROWNVILLE HERALD	ACME	13,000	16 TAB.	26,000
BROWNWOOD BULLETIN	ACME	9,040	8 TAB.	9,040
BRYAN EAGLE	NEA-CLEVELAND	6,900	8 TAB.	6,900
DALLAS NEWS	G.O.P.	197,563	12 STD.	592,689
DALLAS TIMES HERALD	FORT WORTH	164,564	16 STD.	658,256
DEL RIO NEWS HERALD	ACME	4,045	8 TAB.	4,045
EL PASO TIMES	ACME	67,836	16 STD.	271,544
FORT WORTH STAR TELEGRAM	THEIR OWN	225,325	16 STD.	901,300
GAINESVILLE REGISTER	ACME	5,300	8 TAB.	5,300
GALVESTON TRIBUNE	THEIR OWN	23,027	12 STD.	69,051
GLADEWATER MIRROR	THEIR OWN	4,534	8 TAB.	4,534
GONZALES INQUIRER	ACME	2,654	8 TAB.	2,654
GREENVILLE HERALD	NEA-CLEVELAND	8,279	8 TAB.	8,279
HARLINGTON MORNING STAR	ACME	13,000	16 TAB.	26,000
HENDERSON NEWS	ACME	6,069	8 TAB.	6,069
HILLSBORO MIRROR	G.O.P.	4,534	8 TAB.	4,534
HOUSTON CHRONICLE	G.O.P.	219,427	12 STD.	658,281
JACKSONVILLE PROGRESS	ACME	4,689	8 TAB.	4,689
KENNYVILLE TIMES	ACME	3,443	8 TAB.	3,443
LAMBA REPORTER	ACME	4,020	8 TAB.	4,020

READY PRINT SURVEY
TEXAS (CONT)

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
LAREDO TIMES	THEIR CO.	15,191	28 TAB.	53,168
LONGVIEW JOURNAL NEWS	ACME	18,784	16 TAB.	37,568
LUBBOCK AVALANCHE	ACME	44,420	12 STD.	133,260
LUFKIN NEWS	ACME	6,933	8 TAB.	6,933
MCKALLEN EVENING MONITOR	ACME	11,000	16 TAB.	22,000
NEXIA NEWS	W.C.	2,896	8 TAB.	2,896
MIDLAND REPORTER TELEGRAM	ACME	12,642	8 STD.	25,284
ODESSA AMERICAN	ACME	22,237	16 TAB.	44,474
PALESTINE HERALD	ACME	7,490	8 TAB.	7,490
PAMPA NEWS	ACME	7,216	16 TAB.	14,432
PAMPA SPOKESMAN	D.C.P.	5,739	16 TAB.	11,478
PLAINVIEW HERALD	ACME	6,901	16 TAB.	13,802
SAN ANTONIO EXPRESS	G.D.P.	113,055	14 STD.	395,937
SHERMAN DEM.	ACME	13,136	16 TAB.	26,272
SULPHUR SPRINGS NEWS	ACME	3,206	8 TAB.	3,206
SWEETWATER REPORTER	ACME	6,234	8 TAB.	6,234
TAYLOR PRESS	ACME	6,385	8 TAB.	6,385
TEMPLE TELEGRAM	ACME	17,549	16 TAB.	35,098
TEXARKANA GAZETTE	ACME	26,291	16 TAB.	52,582
VERNON RECORD	ACME	5,823	8 TAB.	5,823
VICTORIA ADVOCATE	ACME	10,577	8 TAB.	10,577
WAXACHIE LIGHT	ACME	<u>6,000</u>	8 TAB.	<u>6,000</u>
SUB TOTAL		1,513,057		4,685,169

READY PRINT SURVEY
TEXAS (CONT)

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
<u>L.C.P.</u>				
ABILENE REPORTER NEWS ✓ 0		35,802	8 STD.	73,604
AUSTIN AMERICAN STATESMAN ✓ 0		49,731	12 STD.	149,193
BIG SPRING HERALD ✓ 0		8,600	8 STD.	17,200
COMPTON CHRISTI CALLER TIMES ✓ 0		67,007	8 STD-4 STD.	201,000
DENISON HERALD ✓		10,414	8 STD.	20,828
DENTON REC. CHRONICLE ✓		8,465	8 STD.	16,930
GREENVILLE BANNER ✓		8,021	8 STD.	16,042
HOUSTON POST ✓ 0		225,000	12 STD.	675,000
KILGORE HERALD ✓		6,258	8 TAB.	6,258
MARSHALL NEWS MESSENGER ✓		11,756	8 STD.	23,512
MOUNT PLEASANT TIMES ✓		3,000	8 TAB.	3,000
ORANGE LEADER ✓		6,379	8 STD.	12,758
PARIS NEWS ✓		12,500	8 STD.	25,000
PORT ARTHUR NEWS ✓ 0		23,383	12 STD.	73,149
SAN ANGELO STANDARD TIMES ✓ 0		35,323	8 STD.	70,646
SNYDER NEWS TEXAS ✓ 0		6,233	8 STD.	12,466
TEXAS CITY SUN ✓		5,051	8 STD.	10,052
TYLER COURIER TIMES ✓		22,743	8 STD.	45,486
WACO TRIBUNE ✓ 0		48,000	12 STD.	144,000
WICHITA FALLS DAILY TIMES ✓ 0		52,000	8 STD.	104,000
WHELFORD TEXAS BRAND ✓		2,750	8 STD.	5,500
SAN ANTONIO LIGHT — —		<u>141,000</u>	8 TAB.	<u>141,000</u>
SUB TOTAL.		665,455		1,846,634
GRAND TOTAL		2,178,550		6,531,803

READY PRINT SURVEY

UTAH

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN L's</u>
ODEN STANDARD EXAMINER	ADME	26,919	8 STD.	53,838
PROVO HERALD	ADME	12,483	8 STD.	24,966
SALT LAKE CITY TRIBUNE	THEIR OWN	134,786	12 STD.	534,358
 SUB TOTAL		<hr/> 214,188		<hr/> 613,162
 GRAND TOTAL		<hr/> 214,188		<hr/> 613,162

READY PRINT SURVEY
VERMONT

<u>PAPER</u>	<u>THIRD</u> <u>COVERED</u>	<u>CIRCULATION</u>	<u>TYPE</u> <u>SECTION</u>	<u>CIRCULATION</u> <u>AD</u>
BURLINGTON FREE	C.B.P.	12,842	B TAB.	12,842
SUB TOTAL		12,842		12,842
GRAND TOTAL		12,842		12,842

READY PRINT SURVEY
VIRGINIA

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
PETERSBURG PROGRESS INDEX	S.C.P.	16,594	8 STD.	33,388
PULASKI SOUTHWEST TIMES	B.C.P.	4,853	8 TAB.	4,853
SUFFALK NEWS HERALD	B.C.P.	6,899	8 TAB.	6,899
NEWPORT NEWS PRESS	THEIR OWN	<u>43,600</u>	8 STD.	<u>87,200</u>
SUB TOTAL		72,056		132,350

L.C.P.

DANVILLE REGISTER ✓		18,534	8 STD.	37,168
LYNCHBURG NEWS ✓		22,730	8 STD.	45,460
MARTINSVILLE BULLETIN ✓ 0		8,393	8 STD.	16,786
NORFOLK VA. PILOT ✓ 0		140,000	12 STD.	420,000
RICHMOND TIMES DISPATCH ✓		176,679	16 STD.	706,716
ROANOKE TIMES ✓		80,195	10 STD.	225,487
FARMVILLE HERALD ✓		4,200	4 STD.	4,200
NORFOLK LEADER DISPATCH		16,000	4 STD.	16,000
SUB TOTAL		<u>466,771</u>		<u>1,471,797</u>
GRAND TOTAL		538,827		1,604,147

READY PRINT SURVEY
WASHINGTON

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRCULATION</u>	<u>TYPE SECTION</u>	<u>CIRCULATION AS</u>
BELLINGHAM HERALD	THEIR OWN	20,376	4 STD.	20,376
OLYMPIA OLYMPIAN	THEIR OWN	10,682	8 TAB.	10,682
SEATTLE POST INTELLIGENCE	HEARST	263,831	14 STD.	923,408
SEATTLE TIMES	THEIR OWN	237,502	16 STD.	950,008
SPOKANE SPOKESMAN	THEIR OWN	141,548	12 STD.	424,644
WALLA WALLA UNION BULLETIN	THEIR OWN	16,004	8 TAB.	16,004
YAKIMA HERALD	THEIR OWN	31,405	4 STD.	31,405
WENATCHEE WORLD	G.B.P.	<u>18,200</u>	8 TAB.	<u>18,200</u>
SUB TOTAL		739,548		2,394,727

I.C.P.CO.

TACOMA NEWS TRIBUNE ✓ O		70,626	16 STD.	282,504
WENATCHEE WORLD ✓		16,698	4 STD.	16,698
PACIFIC TRI-CITY HERALD ✓		<u>17,000</u>	8 TAB.	<u>17,000</u>
SUB TOTAL		104,324		316,200
GRAND TOTAL		843,872		2,710,927

1756

READY PRINT SURVEY
WASHINGTON DC.

<u>PAPER</u>	<u>WHERE PRTD.</u>	<u>CIRCULATION</u>	<u>TYPE SECTION</u>	<u>CIRC. IN A's</u>
WASHINGTON STAR	G.B.P.	27,244	10 STD	683,110
SUB TOTAL		<u>27,244</u>		<u>683,110</u>

I. C. P.

WASHINGTON POST & T. H. ✓	I.C.P.	422,000		2,115,000
GRAND TOTAL		<u>696,244</u>	20 STD-	<u>2,798,110</u>

READY PRINT SURVEY
W. VA.

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN A's</u>
BECKLEY POST REGISTER ✓	I.C.P.	30,828	16 TAB.	61,696
BLUEFIELD TELEGRAPH & SUNSET NEWS ✓		35,759	12 STD.	107,877
CHARLESTON GAZETTE ✓		88,280	8 STD.	176,560
CHARLESTON MAIL ✓ 0		60,864	8 STD.	121,728
CLARKSBURG EXPONENT ✓ 0		39,355	42 8 STD.	118,065
FAIRMONT TIMES ✓ 0		17,773	8 STD.	35,546
HUNTINGTON HERALD ADVERTISER ✓ 0		50,358	8 STD.	100,716
PARKERSBURG NEWS SENTINEL ✓ 0		22,653	8 STD.	45,314
WHEELING NEWS REGISTER ✓ 0		<u>50,500</u>	12 STD.	<u>151,500</u>
GRANT TOTAL		401,370		873,648

READY PRINT SURVEY
WISCONSIN

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRCULATION</u>	<u>TYPE SERV.</u>	<u>CIRCULATION C. IN A's</u>
LA CROSSE JOURNAL	G.B.P.	32,546	6 STD	48,819
RAVINE BULLETIN	G.B.P.	29,000	6 STD	44,000
MILWAUKEE JOURNAL	OWN	471,883	12 STD	1,415,649
MILWAUKEE SENTINEL	HEARST	<u>227,920</u>	14 STD	<u>797,752</u>
SUB TOTAL		761,359		2,306,220
	I. C. P.			
MADISON STATE JOURNAL/O	I. C. P.	<u>81,000</u>	8 STD	<u>162,000</u>
SUB TOTAL		<u>81,000</u>	8 STD	162,000
GRAND TOTAL		842,359		2,468,220

1759

READY PRINT SURVEY
TYOILING

<u>PAPER</u>	<u>WHERE PRTD.</u>	<u>CIRCULATION</u>	<u>TYPE SECT.</u>	<u>CIRC. IN 4's</u>
CASPER TRIBUNE HER	ACME	12,963	12 STD	38,809
CHEYENNE TRIBUNE	B.C.P.	10,560	8 TAB	10,560
LAMARIE BULLETIN	B.C.P.	3,092	8 TAB	3,092
RAILING TIMES	B.C.P.	3,383	8 TAB	3,383
ROCK SPRINGS SUN MINOR	ACME	5,437	8 TAB	5,437
WORLD NEWS	B.C.P.	<u>4,244</u>	8 TAB	<u>4,244</u>
SUB TOTAL		39,679		65,605

AUGUST, 1955

READY PRINT SURVEY
CANADA

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN '55</u>
FORT WILLIAM	G.B.P.	14,000	16 TAB.	28,000
HAMILTON SPECTATOR	G.B.P.	93,700	16 TAB.	187,400
KINGSTON, ONT.	G.B.P.	20,400	16 TAB.	40,800
KIRLAND LAKE, ONT.	G.B.P.	6,100	16 TAB.	12,200
MONCTON TIMES TRANS.	G.B.P.	23,500	16 TAB.	47,000
MOOSE JAW SASH TIMES	G.B.P.	10,000	16 TAB.	20,000
OTTAWA CITIZEN	G.B.P.	57,500		
PETERBOROUGH EXAMINER	G.B.P.	17,900	16 TAB.	35,800
PORT ARTHUR NEWS CHRONICAL	G.B.P.	13,000	16 TAB.	26,000
PRINCE ALBERT D. HERALD	G.B.P.	6,700	16 TAB.	13,400
QUEBEC P.Q. CHRONICAL TEL.	G.B.P.	6,200	16 TAB.	12,400
ST. JOHN'S TELEGRAPH	G.B.P.	47,500	12 TAB.	73,250
ST. JOHN'S JRN'L. TIMES	G.B.P.		16 TAB.	95,000
SUDBURY STAR	G.B.P.	24,300	12 - 16 TAB.	85,050
SYDNEY NEWS SCOTIA	G.B.P.	28,450	16 TAB.	56,900
TIMMING DAILY PRESS	G.B.P.	11,150	16 TAB.	22,300
WESTERN STAR C. B.	G.B.P.	5,700	16-12 TAB.	19,950
MONTREAL STANDARD	G.B.P.	36,100		
MONTREAL STAR	G.B.P.	170,000	20 TAB.	425,000
TORONTO TELEGRAM	G.B.P.	277,000	16 TAB.	554,000
THE LONGERY FREDD PRESS	G.B.P.	100,200	16 TAB.	200,400

AUGUST, 1955READY PRINT SURVEY
CANADA (CONT)

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
WINNIPEG FREE PRESS	O.P.	113,000	32 TAB.	452,000
LE SOLIEL	O.P.	111,300	18 TAB.	249,777
VICTORIA DAILY COLONIST	O.P.	51,000	12 TAB.	76,500
THE VANCOUVER PROVINCE	O.P.	194,000	24 TAB.	582,000
CALGARY ALBERTAN	O.P.	33,000	16 TAB.	66,000
THE WINNIPEG STAR	O.P.	74,000	12 TAB.	111,000
LA PATRIE MONTREAL	O.P.	28,000	16 TAB.	56,000
SASKATOON STAR PHOENIX	O.P.	36,000	4 TAB.	36,000
REGINA LEADER POST	O.P.	45,000	8 TAB.	45,000
WINNIPEG TRIBUNE	O.P.	70,000	16 TAB.	140,000
EDMONTON JOURNAL	O.P.	<u>82,000</u>	4 STL.	<u>82,000</u>
TOTAL		1,813,400		3,858,127
OTTAWA		<u>57,500</u>		
		<u>1,870,900</u>		<u>3,858,127</u>

O.P. = 1,903,277

G.B. = 1,954,850

JUNE, 1955

JUNE 1955 DRIVE

SUMMARY

	Value	Type	Value, in 4's
ALABAMA			
ALABAMA			
*Tribune Birmingham	3,400	8 TAB.	3,400
*Tribune Huntsville Gazette	116,100	10 STD.	34,000
*Tribune Mobile Press	13,075	10 STD.	10,000
TOTAL	132,575		51,000
ARKANSAS			
*Arkansas News Tribune	9,075	10 TAB.	10,000
*Arkansas Democrat-Gazette	13,000	10 TAB.	20,000
*Arkansas Gazette News	20,000	8 TAB.	20,000
TOTAL	42,075		70,000
CALIFORNIA			
*Elmer's Independent Times	10,000	8 TAB.	10,000
*Elmer's Times	20,100	10 STD.	30,000
*Elmer's Independent Times	101,400	10 STD.	20,000
*Elmer's Independent Times	25,000	8 TAB.	15,000
*Elmer's Independent Times	21,000	8 TAB.	20,000
*Elmer's Independent Times	10,100	8 STD.	20,000
*Elmer's Times	125,000	10 STD.	60,000
*Elmer's Times	47,100	10 TAB.	141,000
*Elmer's Independent Times	40,000	8 STD.	20,100
*Elmer's Independent Times	140,500	10 STD.	200,000
*Elmer's Independent Times	24,700	10 STD.	20,100
*Elmer's Independent Times	24,000	10 STD.	101,000
*Elmer's Independent Times	21,000	8 STD.	41,000
*Elmer's Times	21,100	8 STD.	60,000
*Elmer's Independent Times	20,000	8 TAB.	20,000
TOTAL	890,100		2,400,000
CONNECTICUT			
*Connecticut Spring Gazette	20,000	10 STD.	20,000
TOTAL	20,000		20,000
CONNECTICUT			
CONNECTICUT			
CONNECTICUT			

CHURCH, J. J.

TOTAL TIME: 10,000

A. J. K.

	Time	Type Section	Time in A's
<u>GEORGIA</u>			
<u>IDAHO</u>			
✓ BOOLE STATE JOURNAL	34,700	R. 100. (101.)	1 34,700
✓ IDAHO FALLS & POSEY JOURNAL	15,955	R. 100. (101.)	31,955
✓ QUARTERLY IDAHO STATE JOURNAL	10,416	R. 100.	20,416
TOTAL	61,071		171,531
<u>ILLINOIS</u>			
<u>INDIANA</u>			
<u>IOWA</u>			
<u>KANSAS</u>			
✓ KANSAS CITY JOURNAL	7,026	R. 100.	7,026
✓ CLEVELAND JOURNAL	10,112	R. 100.	20,112
✓ INDEPENDENT JOURNAL	5,816	R. 100.	5,816
✓ PAMPHLET JOURNAL	2,367	R. 100.	2,367
TOTAL	25,321		42,411
<u>KENTUCKY</u>			
<u>LOUISIANA</u>			
✓ LOUISIANA WEEKLY	8,773	R. 100.	8,773
✓ BAYVIEW JOURNAL			
✓ BAYVIEW JOURNAL			
TOTAL	8,773		8,773
<u>MAINE</u>			
<u>MARYLAND</u>			
<u>MASSACHUSETTS</u>			
<u>MICHIGAN</u>			
<u>MINNESOTA</u>			
<u>MISSISSIPPI</u>			
✓ HAYES JOURNAL	5,795	R. 100.	5,795
TOTAL	5,795		5,795
<u>MISSOURI</u>			

AUGUST, 1925

UNITED STATES DEPT. OF COMMERCE

TABLE

A. B. C.

	Circ.	Type Section	Circ. in 4's
ARIZONA			
ARIZONA STANDARD PRESS	28,079	B STD.	50,158
ARIZONA IMPRINT	7,026	B STD.	12,212
TOTAL	35,105		62,370
ARKANSAS			
ARIZONA			
ARIZONA TIMES	2,225	B TAB.	2,225
ARIZONA PRESS-JOURNAL	19,232	B STD.	57,697
ARIZONA SUN	11,348	B TAB.	22,696
ARIZONA STATE JOURNAL	18,210	B STD.	36,420
TOTAL	51,115		119,038
NEW HAMPSHIRE			
NEW JERSEY			
NEW MEXICO			
ALBUQUERQUE JOURNAL	46,771	B STD.	129,113
ALBUQUERQUE NEWS JOURNAL	7,619	B TAB.	14,230
ALBUQUERQUE TIMES	3,826	B TAB.	3,826
ALBUQUERQUE NEWS & SUN	7,960	B TAB.	7,960
ALBUQUERQUE NEWS	3,091	B TAB.	3,091
ALBUQUERQUE NEWS JOURNAL	11,463	B TAB.	11,463
TOTAL	80,730		179,693
NEW YORK			
NORTH CAROLINA			
NORTH DAKOTA			
OHIO			
OKLAHOMA			
CLINTON NEWS	4,967	B TAB.	4,967
CUMING DAILY CITIZEN	4,998	B TAB.	4,998
DUNCAN BANNER	9,431	B TAB.	18,862
DURANT DEM.	6,653	B TAB.	6,653
EL CITY NEWS	4,000	B TAB.	4,000
GUTHRIE LEADER	5,176	B TAB.	5,176
GUYMAN HERALD	3,346	B TAB.	3,346
LANTON CONSTITUTION PRESS	16,516	B TAB.	33,032
SAVRE HEADLIGHT JOURNAL	2,804	B TAB.	2,804
SEMINOLE PRODUCER	2,021	B TAB.	2,021
TOTAL	63,300		129,811

1705

AMMERS, 1955

HEAVY MAIL DELIVERY

PAGE 4

A. B. L.

	Units	Type SECTION	Units in 4's
CHICAGO			
PALESTINE TRIBUNE	17,764	8 TAB.	17,764
PALESTINE TRIBUNE	4,416	8 TAB.	4,416
TOTAL	21,978		21,978
PENNSYLVANIA			
SHORT ISLAND			
SOUTH CAROLINA			
SOUTH MARYLAND			
TEXAS			
TEXAS			
ALICE ECHO	5,491	8 TAB.	5,491
AMARILLO NEWS	58,649	12 STD.	178,047
ARLINGTON FAVORITE	4,777	8 TAB.	4,777
ARLINGTON BANNER	5,778	8 TAB.	5,778
ARLINGTON BANNER	13,000	16 TAB.	20,800
ARLINGTON BULLETIN	9,040	8 TAB.	9,040
ARLINGTON NEWS HERALD	4,045	8 TAB.	4,045
ARLINGTON TIMES	67,885	16 STD.	271,540
ARLINGTON HERALD	5,300	8 TAB.	5,300
ARLINGTON INQUIRER	2,654	8 TAB.	2,654
ARLINGTON NEWS	13,000	16 TAB.	20,800
ARLINGTON NEWS	6,050	8 TAB.	6,050
ARLINGTON PHOENIX	4,600	8 TAB.	4,600
ARLINGTON TIMES	3,448	8 TAB.	3,448
ARLINGTON REPORTER	4,030	8 TAB.	4,030
ARLINGTON JOURNAL NEWS	18,784	16 TAB.	30,054
ARLINGTON AVENUE	44,430	12 STD.	177,720
ARLINGTON NEWS	6,933	8 TAB.	6,933
ARLINGTON VALLEY EVENING NEWS	11,000	16 TAB.	22,000
ARLINGTON REPORTER NEWS	12,500	8 STD.	25,000
ARLINGTON AMERICAN	20,000	16 TAB.	40,000
ARLINGTON HERALD	7,400	8 TAB.	7,400
ARLINGTON NEWS	7,216	16 TAB.	14,432
ARLINGTON HERALD	6,901	16 TAB.	13,802
ARLINGTON DEMOCRAT	13,136	16 TAB.	26,272
ARLINGTON SPRINGS NEWS TELEGRAM	3,206	8 TAB.	3,206
ARLINGTON REPORTER	6,234	8 TAB.	6,234
ARLINGTON PRESS	6,385	8 TAB.	6,385
ARLINGTON TELEGRAM	17,549	16 TAB.	35,098
ARLINGTON GAZETTE	25,291	16 TAB.	50,582
ARLINGTON RECORD	5,823	8 TAB.	5,823
ARLINGTON ADVOCATE	10,577	8 TAB.	10,577
ARLINGTON LIGHT	6,000	8 TAB.	6,000
TOTAL	507,650		1,015,300

AUGUST, 1955

READY PRINT SURVEY

PAGE 5

A C H E

	CIRC.	TYPE SECTION	CIRC. IN 4's
<u>UTAH</u>			
✓ DAILY STANDARD EXAMINER	26,919	8 STD.	53,838
✓ PROVO HERALD	<u>12,483</u>	8 STD.	<u>26,966</u>
TOTAL	39,402		78,804
<u>VERMONT</u>	_____	_____	_____
<u>VIRGINIA</u>	_____	_____	_____
<u>WASHINGTON</u>	_____	_____	_____
<u>WEST VIRGINIA</u>	_____	_____	_____
<u>WISCONSIN</u>	_____	_____	_____
<u>WYOMING</u>			
✓ CASPER TRIBUNE HERALD	12,853	12 STD.	38,809
✓ ROCK SPRINGS SUN-MINER	<u>5,437</u>	8 TAB.	<u>5,437</u>
TOTAL	18,400		44,246
 GRAND TOTAL	 1,986,874		 5,001,850

AUGUST, 1955READY PRINT SURVEYBUFFALO COLOR

	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
<u>ALABAMA</u>			
DOTHAN EAGLE	21,178	8 STD.	42,356
FLORENCE TRI-CITY TIMES	17,108	8 STD.	34,216
SELMA TIMES JOURNAL	<u>9,815</u>	8 TAB.	<u>9,815</u>
TOTAL	48,101		86,387
<u>COLORADO</u>			
DUCANGO HERALD NEWS	3,385	8 TAB.	3,385
TOTAL	3,385		3,385
<u>FLORIDA</u>			
DELAND SUN NEWS	4,663	8 TAB.	4,663
FORT LAUDERDALE NEWS SENTINEL	24,406	8 STD.	48,812
FORT MYERS NEWS PRESS	9,789	8 STD.	19,578
FORT PIERCE NEW TRIBUNE	6,411	8 TAB.	6,411
GOALA STAR BANNER	7,057	8 TAB.	7,057
PANAMA CITY NEWS HERALD	14,263	8 STD.	28,526
SARASOTA HERALD TRIBUNE	<u>13,268</u>	8 STD.	<u>26,536</u>
TOTAL	79,957		141,783
<u>GEORGIA</u>			
GAINESVILLE TIMES	5,982	8 TAB.	5,982
TOTAL	5,982		5,982
<u>ILLINOIS</u>			
AURORA BEACON NEWS	29,918	8 TAB.	29,918
CHICAGO DAILY NEWS	572,556	16 TAB.	1,145,112
JOLIET HERALD NEWS	33,482	8 TAB.	33,482
KANKAKEE JOURNAL	<u>23,311</u>	8 TAB.	<u>23,311</u>
TOTAL	659,257		1,231,823
<u>INDIANA</u>			
EVANSVILLE COURIER	89,316	16 STD.	357,264
HAMMOND TIMES	49,143	8 STD.	98,286
HUNTINGTON HERALD PRESS	8,441	8 TAB.	8,441
INDIANAPOLIS TIMES	98,673	12 STD.	296,019
KOKOMO TRIBUNE	<u>20,522</u>	8 TAB.	<u>20,522</u>
TOTAL	266,095		780,532

JANUARY 1955

HEAVY PRINT SURVEY

PAGE 2

BUFFALO COLOR

	CIRC.	TYPE SECTION	CIRC. IN 4's
<u>LOUISIANA</u>			
COUNCIL BLUFFS NONPAREIL	29,294	16 TAB.	58,588
TOTAL	29,294		58,588
<u>KANSAS</u>			
ARKANSAS CITY TRAVELER	6,375	8 TAB.	6,375
TOTAL	6,375		6,375
<u>KENTUCKY</u>			
COBBIN TIMES	4,341	8 TAB.	4,341
FRANKFORD STATE JOURNAL	5,667	8 TAB.	5,667
HARLEN ENTERPRISE	5,793	8 TAB.	5,793
TOTAL	15,801		15,801
<u>MISSISSIPPI</u>			
CORINTH CORINTHEAN	5,237	8 TAB.	5,237
TOTAL	5,237		5,237
<u>MONTANA</u>			
LEWISTOWN NEWS	5,000	8 TAB.	5,000
MILES CITY STAR	4,582	8 TAB.	4,582
TOTAL	9,582		9,582
<u>NEW JERSEY</u>			
ATLANTIC CITY PRESS	26,867	16 - TAB.	53,734
TOTAL	26,867		53,734
<u>NEW MEXICO</u>			
CARLSBAD CURRENT CITIZEN	8,625	8 TAB.	8,625
TOTAL	8,625		8,625
<u>NEW YORK</u>			
POUGHKEEPSIE NEW YORKER	26,699	16 TAB.	43,318
TOTAL	26,699		43,318
<u>NORTH CAROLINA</u>			
CONCORD TRIBUNE	8,685	8 TAB.	8,685
TOTAL	8,685		8,685

AUGUST, 1955

READY PRINT SURVEY

PAGE 3

BUFFALO COLOR

	CIRC.	TYPE SECTION	CIRC. IN 4's
<u>OHIO</u>			
COLUMBUS CITIZEN	104,943	12 STD.	314,829
ELYRIA CHRONICLE	19,415	8 TAB.	19,415
ZANESVILLE TIMES HERALD	<u>20,676</u>	8 STD.	<u>41,272</u>
TOTAL	144,994		375,516
<u>OKLAHOMA</u>			
ADA NEWS	9,093	8 TAB.	9,903
CHICKASAW EXPRESS	6,135	8 TAB.	6,135
NORMAN TRANSCRIPT	6,363	8 TAB.	6,363
PONCA CITY NEWS	<u>11,213</u>	8 TAB.	<u>11,213</u>
TOTAL	32,804		32,804
<u>SOUTH DAKOTA</u>			
HURON HURONITE & PLAINSMAN	11,610	8 STD.	23,220
TOTAL	11,610		23,220
<u>TENNESSEE</u>			
ELIZABETHTON STAR	5,802	8 TAB.	5,802
KNOXVILLE SENTINEL	<u>108,872</u>	12 STD.	<u>326,616</u>
TOTAL	114,674		332,418
<u>TEXAS</u>			
BORGER NEWS HERALD	10,369	8 STD.	20,738
PAUPA SPOKESMAN	<u>5,729</u>	12 TAB.	<u>11,458</u>
TOTAL	16,098		32,196
<u>VIRGINIA</u>			
PULASKI SOUTHWEST TIMES	4,863	8 TAB.	4,863
SUFFOLK NEWS HERALD	<u>6,899</u>	8 TAB.	<u>6,899</u>
TOTAL	11,762		11,762
<u>WYOMING</u>			
CHEYENNE TRIBUNE	10,560	8 TAB.	10,560
LARAMIE BULLETIN	3,092	8 TAB.	3,092
RANDOLPH TIMES	3,383	8 TAB.	3,383
WORLD NEWS	<u>4,244</u>	8 TAB.	<u>4,244</u>
TOTAL	21,279		21,279
GRAND TOTAL	1,541,513		3,289,032

READY PRINT SURVEYEASTERN COLOR

	Circ.	TYPE SECTION	Circ. in 4's
<u>CONNECTICUT</u>			
BRIDGEPORT POST	61,132	3 TAB.	244,528
HARTFORD CURRENT	130,826	12 STD.	392,478
NEW HAVEN REGISTER	93,386	12 STD.	280,158
WATERBURY AMERICAN REPUBLICAN	47,857	8 TAB. 8 STD.	131,571
TOTAL	285,344		1,048,735
<u>FLORIDA</u>			
MIAMI BEACH SUN	9,325	8 TAB.	9,325
TOTAL	9,325		9,325
<u>MAINE</u>			
BANGOR NEWS	73,999	8 STD.	147,198
TOTAL	73,999		147,198
<u>MASSACHUSETTS</u>			
LOWELL SUN	27,569	8 STD.	55,138
WORCESTER TELEGRAM	104,000	12 STD.	312,000
BOSTON HERALD TRAVELER	348,071	8 STD.	696,142
TOTAL	131,569		135,280
<u>NEW HAMPSHIRE</u>			
MANCHESTER SUN NEWS	34,617	8 STD.	69,234
TOTAL	34,617		69,234
<u>NEW JERSEY</u>			
ASBURY PARK PRESS	26,000	8 STD.	52,000
NEWARK NEWS	288,382	10 STD.	720,955
NEW BRUNSWICK HOME NEWS	28,235	16 TAB.	56,470
TOTAL	342,612		829,425
<u>NORTH CAROLINA</u>			
GREENSBORO NEWS	88,830	12 STD.	266,490
TOTAL	88,830		266,490
<u>RHODE ISLAND</u>			
PROVIDENCE JOURNAL	179,065	10 STD.	447,662
TOTAL	179,065		447,662
GRAND TOTAL	1,144,961		3,681,339

AUGUST, 1955

READY PRINT SURVEYFORT WORTH

	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
<u>TEXAS</u>			
DALLAS TIMES HERALD	164,564	16 STD.	658,256
FORT WORTH STAR TELEGRAM	<u>225,325</u>	16 STD.	<u>901,300</u>
TOTAL	389,889		1,559,556
GRAND TOTAL	389,889		1,559,556

/ AUGUST, 1955

DEADLY FIGHT SQUADRYGREATER BUFFALO LODGE

	CIRC.	SECTION	CIRC. IN 4's
<u>ALABAMA</u>			
MOBILE PRESS REGISTER	85,005	10 STD.	212,512
TALLADEGA DAILY HOME	<u>2,900</u>	8 TAB.	<u>2,900</u>
TOTAL	87,905		215,412
<u>ARKANSAS</u>			
PINE BLUFF COMMERCIAL	<u>14,801</u>	8 TAB.	<u>14,801</u>
TOTAL	14,801		14,801
<u>FLORIDA</u>			
MERIDIAN TIMES	2,643	6 STD.	3,967
MIAMI NEWS	<u>97,541</u>	14 STD.	<u>361,358</u>
ST. AUGUSTINE RECORD	<u>5,623</u>	4 STD.	<u>5,623</u>
TOTAL	105,809		370,948
<u>GEORGIA</u>			
ATLANTA JOURNAL CONSTITUTION	<u>480,919</u>	12 STD.	<u>1,642,797</u>
TOTAL	480,919		1,642,797
<u>ILLINOIS</u>			
CHICAGO SUN TIMES	<u>973,327</u>	20 TAB.	<u>1,623,317</u>
TOTAL	973,327		1,623,317
<u>INDIANA</u>			
INDIANAPOLIS STAR	295,022	16 STD.	1,180,088
MUNCIE STAR	<u>39,653</u>	14 STD.	<u>103,985</u>
FORT WAYNE JOURNAL GAZETTE	<u>90,000</u>	12 STD.	<u>320,000</u>
TOTAL	414,675		1,554,073
<u>IOWA</u>			
DUBUQUE TELEGRAPH HERALD	39,636	6 STD.	59,454
SIOUX CITY JOURNAL	<u>63,973</u>	10 STD.	<u>159,932</u>
WATERLOO COURIER	<u>48,943</u>	6 STD.	<u>73,628</u>
TOTAL	152,552		292,815
<u>KANSAS</u>			
GOODLAND NEWS	<u>2,700</u>	8 TAB.	<u>2,700</u>
TOTAL	2,700		2,700

AUGUST, 1955

READY PRINT SURVEY

PAGE 2

GREATER BUFFALO COLOR

	CIRC.	TYPE SECTION	CIRC. IN A's
<u>KENTUCKY</u>			
HENDERSON GLEANER JOURNAL	6,574	8 TAB.	6,574
LOUISVILLE COURIER TIMES	<u>308,325</u>	8 STD.	<u>616,650</u>
TOTAL	314,899		623,224
<u>LOUISIANA</u>			
BOZALUSA NEWS	5,399		5,399
TOTAL	<u>5,399</u>		<u>5,399</u>
<u>MARYLAND</u>			
BALTIMORE SUN	308,969	8 STD-12 TAB.	1,079,991
TOTAL	<u>308,969</u>		<u>1,079,991</u>
<u>MASSACHUSETTS</u>			
BOSTON GLOBE	351,730	10 STD.	914,325
BOSTON POST	<u>280,930</u>	10 STD.	<u>567,315</u>
TOTAL	632,660		1,481,640
<u>MICHIGAN</u>			
DETROIT FREE PRESS	508,000	12 STD.	1,524,000
DETROIT NEWS	<u>774,000</u>	12 STD.	<u>1,722,000</u>
TOTAL	1,082,000		3,246,000
<u>MINNESOTA</u>			
DULUTH NEWS TRIBUNE	71,059	10 STD.	177,647
ST. PAUL PIONEER PRESS	<u>123,183</u>	10 STD.	<u>433,257</u>
TOTAL	244,242		610,904
<u>MISSISSIPPI</u>			
KANSAS CITY STAR	351,503	12 STD.	1,084,509
ST. LOUIS GLOBE DEM.	<u>256,356</u>	12 STD.	<u>1,063,062</u>
TOTAL	607,859		2,147,571
<u>MONTANA</u>			
BOZEMAN CHRONICLE	4,777	8 TAB.	4,777
TOTAL	<u>4,777</u>		<u>4,777</u>
<u>NEW MEXICO</u>			
ROSWELL RECORD	9,944	8 TAB.	9,944
TOTAL	<u>9,944</u>		<u>9,944</u>

JANUARY 1955

HEAVY BLUNT SURVEY

PAGE 3

GREATER BUFFALO COLOR

	CIRC.	TYPE SECTION	CIRC. IN A's
<u>NEW YORK</u>			
BUFFALO COURIER EXPRESS	299,263	14 STD.	1,047,420
NEW YORK HERALD TRIBUNE	528,253	6 STD.	792,379
NEW YORK POST	277,808	12 STD.	416,712
ROCHESTER DEM. CHRONICLE	172,719	14 STD.	599,466
SYRACUSE HERALD AMERICAN	221,954	12 STD.	665,862
SYRACUSE POST STANDARD	101,254	12 STD.	303,762
UTICA OBSERVER	<u>49,745</u>	10 STD.	<u>126,352</u>
TOTAL	1,690,996		3,949,963
<u>NORTH CAROLINA</u>			
ROANOKE RAPIDS HERALD	4,063	8 TAB.	4,063
TOTAL	<u>4,063</u>		<u>4,063</u>
<u>NORTH DAKOTA</u>			
FARGO FORUM	90,845	10 STD.	122,112
TOTAL	<u>90,845</u>		<u>122,112</u>
<u>OHIO</u>			
CAMBRIDGE JERREBSONIAN	13,825	8 TAB.	13,825
CINCINNATI INQUIRER	282,550	12 STD.	847,650
CLEVELAND PALIN DEALER	513,877	12 STD.	1,539,621
COLUMBUS DISPATCH	230,366	12 STD.	691,098
COLUMBUS STAR	15,000	12 TAB.	112,000
LORAIN JOURNAL TIMES HERALD	22,644	8 TAB.	22,644
MAHONDI NEWS JOURNAL	31,872	8 TAB.	31,872
TOLDO BLADE & TIMES	166,660	14 STD.	483,310
YOUNGSTOWN VINDICATOR	139,230	12 STD.	417,660
DAYTON JOURNAL HERALD	<u>97,750</u>	8 STD.	<u>141,500</u>
TOTAL	1,573,104		4,451,180
<u>PENNSYLVANIA</u>			
ALLENTOWN CALL CHRONICLE	65,097	12 STD.	195,291
ERIE DISPATCH	44,905	12 STD.	134,715
ERIE TIMES	40,169	12 STD.	120,507
LANCASTER SUN NEWS	67,599	14 STD.	236,576
UNION TOWN EVENING STANDARD	19,000	8 TAB.	19,000
UNIONTOWN MORNING HERALD	<u>11,000</u>	8 TAB.	<u>11,000</u>
TOTAL	267,770		717,089
<u>SOUTH DAKOTA</u>			
SIOUX CITY FALLS ARMOY LEADER	51,053	10 STD.	127,362
TOTAL	<u>51,053</u>		<u>127,362</u>

AUGUST, 1955

HEAVY PRINT SURVEY

PAGE 4

GREATER BUFFS & COLOR

	CIRC.	TYPE SECTION	CIRC. IN 4's
<u>TENNESSEE</u>			
MEMPHIS GAZETTE MAIL	4,661	8 TAB.	4,661
NASHVILLE TENNESSEAN	<u>191,40</u>	10 STD.	<u>478,320</u>
TOTAL	196,071		483,011
<u>TEXAS</u>			
DALLAS NEWS	197,563	12 STD.	992,689
HILSBORO MIRROR	4,534	8 TAB.	4,534
HOUSTON CHRONICLE	219,427	12 STD.	658,281
SAN ANTONIO EXPRESS	<u>113,055</u>	13 STD.	<u>395,477</u>
TOTAL	534,579		1,651,461
<u>VERMONT</u>			
DURLINGTON NEWS	12,842	8 TAB.	12,842
TOTAL	12,842		12,842
<u>WASHINGTON</u>			
WENATCHEE WORLD	18,200	8 TAB.	18,200
TOTAL	18,200		18,200
<u>WASHINGTON, D.C.</u>			
WASHINGTON STAR	273,244	10 STD.	683,110
TOTAL	273,244		683,110
<u>WISCONSIN</u>			
LAS CROIXE JOURNAL	32,546	6 STD.	48,819
RACINE BULLETIN	<u>28,000</u>	6 STD.	<u>44,000</u>
TOTAL	61,546		92,819
SUB TOTAL	<u>9,789,288</u>		<u>26,843,474</u>
<u>CANADA</u>			
FORT WILLIAM	14,000	16 TAB.	28,000
HAMILTON SEPECTATOR	93,700	16 TAB.	187,400
KINGSTON ONT.	20,400	16 TAB.	40,800
KIRLAND LAKE, ONT.	6,100	16 TAB.	12,200
MONTON TIMES TRANS.	23,500	16 TAB.	47,000
MOOSE JAW SASH TIMES	10,000	16 TAB.	20,000
OTTAWA CITIZEN	57,500		
PETERSBOROUGH EXAMINER	17,900	16 TAB.	35,800
FORT ARTHUR NEWS CHRONICAL	13,000	16 TAB.	26,000
PRINCE ALBERT D. HERALD	6,700	16 TAB.	13,400

AUGUST, 1955

READY PRINT SURVEY

PAGE 5

GREATER BUFFALO COLOR

	CIRC.	TYPE SECTION	CIRC. IN 4's
<u>CANADA (CONT.)</u>			
QUEBEC P.Q. CHRONICAL TE.	6,200	16 TAB.	12,400
ST. JOHN'S TELEGRAPH	47,500	12 TAB.	73,250
ST. JOHN'S JOUR. TIMES		16 TAB.	95,000
SUDBURY STAR	24,300	12-16 TAB.	85,050
SYDNEY NOVO SCOTIA	28,450	16 TAB.	56,900
TIMMINS DAILY PRESS	11,150	16 TAB.	22,300
WESTERN STAR C.B.	5,700	16-12 TAB.	19,950
MONTREAL STANDARD	35,100		
MONTREAL STAR	170,000	20 TAB.	425,000
TORONTO TELEGRAM	277,000	16 TAB.	554,000
THE LONDERY FREE PRESS	<u>100,200</u>	16 TAB.	<u>200,400</u>
TOTAL	906,400		1,954,850
<hr/>			
GRAND TOTAL	10,695,688		28,798,324

AUGUST, 1955READY PRINT SURVEYHEARST

	CIRC.	TYPE SECTION	CIRC. IN 4's
<u>CALIFORNIA</u>			
LOS ANGELES EXAMINER	671,613	14 STD.	2,350,645
SAN FRANCISCO EXAMINER	<u>499,089</u>	14 STD.	<u>1,746,811</u>
TOTAL	1,170,705		4,097,456
<u>ILLINOIS</u>			
CHICAGO HERALD AMERICAN	753,122	14 STD.	2,635,929
TOTAL	753,122		2,635,929
<u>MARYLAND</u>			
BALTIMORE AMERICAN	321,469	14 STD.	1,445,141
TOTAL	321,469		1,445,141
<u>MASSACHUSETTS</u>			
BOSTON SUN ADVERTISER	547,691	12 STD.	1,643,073
TOTAL	547,691		1,643,073
<u>MICHIGAN</u>			
DETROIT TIMES	528,009	12 STD.	1,584,027
TOTAL	528,009		1,584,027
<u>NEW YORK</u>			
ALBANY TIMES UNION	116,052	12 STD.	348,156
NEW YORK JOURNAL AMERICAN	<u>866,233</u>	14 STD.	<u>3,081,815</u>
TOTAL	982,285		3,379,971
<u>TEXAS</u>			
SAN ANTONIO LIGHT	141,000	14 STD.	493,500
TOTAL	141,000		493,500
<u>WASHINGTON</u>			
SEATTLE POST INTELLIGENCER	<u>263,831</u>	14 STD.	<u>923,408</u>
TOTAL	263,831		923,408
<u>WISCONSIN</u>			
MILWAUKEE SENTINEL	<u>227,930</u>	14 STD.	<u>797,755</u>
TOTAL	227,930		797,755
GRAND TOTAL	<u>4,936,039</u>		<u>17,000,350</u>

August, 1955

HEAVY FLIGHT SURVEY

L.C.F.

	Class.	Type Section	Circ. in Area
ALABAMA			
BIRMINGHAM NEWS	211,270	12 STD.	633,810
DECATUR DAILY	13,650	8 STD.	27,300
GADSDEN TIMES	21,895	8 STD.	43,790
HUNTSVILLE TIMES	18,704	8 STD.	37,408
MONTGOMERY ADV.	72,948	8 STD.	145,896
TUSCALOOSA NEWS	15,560	8 STD.	31,120
ANDALUSIA VINNIE'S DISPATCH	3,000	8 TAB.	3,000
TOTAL	377,027		925,324
ARKANSAS			
LITTLE ROCK ANN. GAZETTE	105,387	10 STD.	263,467
TOTAL	105,387		263,467
COLORADO			
COLORADO SPRINGS FREE PRESS	9,403	8 STD.	18,806
TOTAL	9,403		18,806
FLORIDA			
DADE COUNTY HERALD	10,379	8 STD.	21,158
CLEARWATER SUN	9,914	8 STD.	19,828
GAINESVILLE SUN	10,496	4 STD.	10,496
LAKE LAND LEDGER	15,434	8 STD.	30,868
MIAMI HERALD	255,976	16 STD.	1,023,904
ORLANDO SENTINEL STAR	36,977	12 STD.	170,931
PENSACOLA JOURNAL NEWS	46,000	8 STD.	92,000
ST. PETERSBURG TIMES	59,568	12 STD.	178,704
TOTAL	464,944		1,488,321
GEORGIA			
AUGUSTA CHRONICLE HERALD	61,235	16 STD.	244,940
COLUMBUS LEDGER INQUIRER	45,526		136,608
MACON TELEGRAPH NEWS	50,860		152,580
SAVANNAH NEWS PRESS	58,686		176,058
WAYCROSS JOURNAL	8,000	8 TAB.	8,000
TOTAL	224,317		718,186
IDAHO			
LEWISTON TRIBUNE	15,000	8 TAB.	15,000
TOTAL	15,000		15,000

AUGUST, 1935

HEAVY MAIL SURVEY

PAGE 2

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	<u>CIRC.</u>	<u>TYPE</u> <u>SECTION</u>	<u>CIRC. IN</u> <u>LA</u>
<u>ILLINOIS</u>			
BLOOMINGTON PANTAGRAPH	33,215	4 STD.	33,215
CHAMPAIGN NEWS GAZETTE	29,908	8 STD.	29,908
DANVILLE COMMERCIAL NEWS	34,237	8 STD.	68,474
PEORIA JOURNAL STAR	87,719	16 STD.	358,876
ROCKFORD STAR	62,665	8 STD.	125,330
TOTAL	247,535		655,471
<u>INDIANA</u>			
FORT WAYNE NEWS SENTINEL	70,577	8 STD.	181,114
MARION CHRONICLE	19,989	4 STD.	19,989
NEW ALBANY LEADER	6,579	8 TAB.	6,579
TERRE HAUTE TRIBUNE	46,700	4 STD.	46,700
TOTAL	163,245		254,502
<u>LOWA</u>			
CEDAR RAPIDS GAZETTE	77,877	6 STD.	87,712
DAVENPORT DEM.	71,285	8 STD.	71,285
TOTAL	77,195		164,495
<u>KANSAS</u>			
HAYS NEWS	6,321	8 TAB.	6,321
HUTCHINSON NEWS HERALD	54,057	8 STD.	108,114
SALINA JOURNAL	24,831	8 STD.	49,662
TOPEKA DAILY CAPITAL	43,446	8 STD.	136,892
WICHITA BEACON	179,279	12 STD.	417,877
WICHITA EAGLE	112,223	8 STD.	236,446
TOTAL	405,167		953,292
<u>KENTUCKY</u>			
ASHLAND INDEPENDENT	16,795	16 TAB.	33,590
BOWLING GREEN PARK CITY NEWS	10,281	8 TAB.	10,281
DANVILLE ADVOCATE	3,675	8 TAB.	3,675
LEXINGTON HERALD LEADER	52,664	8 STD.	105,328
PADUCAN SUN DEMOCRAT	28,637	8 TAB.	28,637
TOTAL	112,054		181,713
<u>LOUISIANA</u>			
LAKE CHARLES AMERICAN PRESS	22,579	8 STD.	45,158
MONROE WORLD	32,025	8 STD.	64,050
NEW ORLEANS ITEM	107,571	8 STD.	215,142
SHREVEPORT TIMES	95,190	12 STD.	285,570
TOTAL	257,365		610,400

AUGUST, 1933

HEAVY PRINT SURVEY

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I.R.P.

	CARD.	TYPE SECTION	CIRC. IN A's
<u>MAINE</u>			
PORTLAND SUN TELEGRAM	103,000	12 STD.	309,000
TOTAL	103,000		309,000
<u>MAINE</u>			
CUMBERLAND SUN TIMES	89,516	12 STD.	88,548
TOTAL	89,516		88,548
<u>MASSACHUSETTS</u>			
LYNN TELEGRAM NEWS	22,436	4 STD.	22,436
NEW BEDFORD STANDARD TIMES	90,824	8 STD.	101,648
TOTAL	73,260		124,084
<u>MICHIGAN</u>			
GRAND RAPIDS HERALD	79,000	16 STD.	316,000
TOTAL	79,000		316,000
<u>MISSISSIPPI</u>			
GREENVILLE DELTA DEM. TIMES	11,631	8 TAB.	11,631
NATCHEZ DEM.	5,558	8 TAB.	5,558
JACKSON STATE TIMES	45,000	8 STD.	90,000
TUPELO MISS. HERALD	12,900	8 STD.	25,800
VICKSBURG MISS. HERALD	9,700	8 TAB.	9,700
JACKSON CLARION LEDGER	79,000	16 STD.	316,000
TOTAL	163,389		457,889
<u>MISSOURI</u>			
JOPLIN GLOBE	34,815	8 STD.	69,630
ST. JOSEPH NEWS PRESS	90,213	8 STD.	100,426
TOTAL	85,028		170,056
<u>NEW JERSEY</u>			
NEWARK STAR LEDGER	297,328	12 STD.	891,984
TRENTON TIMES	66,761	8 STD.	133,522
TOTAL	364,089		1,025,506

AUGUST, 1955

READY PRINT SURVEY

PAGE 4

1.C.C.P.

	CIRC.	TYPE SECTION	CIRC. IN 4's
<u>NEW MEXICO</u>			
LAS CRUCES SUN NEWS	3,709	8 TAB.	3,709
SILVER CITY PRESS	<u>3,600</u>	8 TAB.	<u>3,600</u>
TOTAL	7,309		7,309
<u>NEW YORK</u>			
BINGHAMTON PRESS	61,946	16 STD.	247,784
JAMAICA LONG ISLAND PRESS	290,000	12 STD.	870,000
NEW YORK MIRROR	1,999,216	16 TAB.	3,198,426
GARDEN CITY NEWS DAY	<u>255,000</u>	8 TAB.	<u>255,000</u>
TOTAL	2,306,162		4,771,220
<u>NORTH CAROLINA</u>			
ASHEVILLE CITIZEN TIMES	52,367	8 STD.	104,734
CHARLOTTE OBSERVER	146,180	12 STD.	438,540
DURHAM HERALD	38,801	8 STD.	73,602
ELIZABETH CITY ADVANCE	7,494	8 TAB.	7,494
HENDERSON DISPATCH	4,927	8 TAB.	4,927
KANNAPOLIS INDEPENDENT	10,399	8 STD.	20,718
RALEIGH NEWS & OBSERVER	129,607	10 STD.	324,017
RALEIGH TIMES	15,179	8 TAB.	15,179
WILMINGTON	28,290	8 STD.	56,500
MOREHEAD CITY	3,500	8 TAB.	3,500
WINSTON SALEM	<u>66,129</u>	12 STD.	<u>198,387</u>
TOTAL	502,793		1,247,298
<u>NORTH DAKOTA</u>			
GRAND FORKS HERALD	34,250	8 STD.	68,500
TOTAL	34,250		68,500
<u>OHIO</u>			
ARION DRAGON JOURNAL	199,201	16 STD.	636,804
ATHENA MESSENGER	19,194	8 STD.	38,388
CANTON REPOSITORY	70,645	8 STD.	141,290
DAYTON NEWS	168,128	12 STD.	504,384
FRONTON TRIBUNE	9,437	8 STD.	18,874
LIMA NEWS	35,977	8 STD.	71,954
MIDDLETON NEWS JOURNAL	19,037	4 STD.	19,037
SPRINGFIELD NEWS SUN	<u>26,182</u>	8 STD.	<u>76,756</u>
TOTAL	519,801		1,506,995

AUGUST, 1955

READY PRINT SURVEY

PAGE 5

I.C.P.

	Circ.	TYPE SECTION	Circ. in 4's
<u>OKLAHOMA</u>			
TULSA WORLD	145,258	16 STD.	581,032
TOTAL	145,258		581,032
<u>PENNSYLVANIA</u>			
HARRISBURG PATRIOT NEWS	114,583	12 STD.	343,749
PITTSBURGH SUN TELEGRAPH	453,000	20 TAB.	1,132,500
READING EAGLE	59,000	8 STD.	472,000
SCRANTON SCRANTONIAN	48,531	8 STD.	97,062
WILKES BARRE INDEPENDENT	46,840	4 STD.	46,840
PHILADELPHIA MAYFAIR TIMES	17,000	8 STD.	34,000
TOTAL	738,854		2,126,151
<u>SOUTH CAROLINA</u>			
ANDERSON INDEPENDENT MAIL	42,170	8 STD.	84,340
CHARLESTON NEWS & COURIER	60,533	8 STD.	131,066
COLUMBIA STATE	83,108	12 STD.	249,324
GREENVILLE NEWS	78,845	12 STD.	236,535
ORANGEBURG TIMES & DEM.	5,798	8 STD.	11,596
SPARTANBURG HERALD JOURNAL	37,908	8 STD.	75,816
CHARLESTON EVENING POST	31,500	4 STD.	31,500
TOTAL	339,852		819,137
<u>SOUTH DAKOTA</u>			
ABERDEEN AMERICAN NEWS	20,201	8 STD.	40,400
RAPID CITY JOURNAL	24,319	8 STD.	48,638
WATERTOWN PUBLIC OPINION	12,248	8 TAB.	12,248
TOTAL	56,768		101,286
<u>TENNESSEE</u>			
BRISTOL HERALD	23,879	8 STD.	47,798
CHATTANOOGA TIMES	88,764	12 STD.	266,392
JACKSON SUN	15,130	8 STD.	30,260
KINGSPORT TIMES	20,561	12 STD.	61,683
KNOXVILLE JOURNAL	88,456	12 STD.	265,368
GREENVILLE DAILY SUN	12,000	4 STD.	12,000
TOTAL	248,790		683,401

READY PRINT SURVEY

PAGE 6

I.C.P.

	<u>CIRC.</u>	<u>TYPE</u> <u>SECTION</u>	<u>CIRC. IN</u> <u>4's</u>
<u>TEXAS</u>			
ABILENE REPORTER NEWS	36,802	8 STD.	73,604
AUSTIN AMERICAN STATESMAN	49,731	12 STD.	149,193
BIG SPRING HERALD	8,600	8 STD.	17,200
CORPUS CHRISTI CALLED TIMES	67,007	8 STD-4STD.	201,000
DENISON HERALD	10,414	8 STD.	20,828
DENTON "ED. CHRONICLE	8,465	8 STD.	16,930
GREENVILLE BANNER	8,021	8 STD.	16,042
HOUSTON POST	229,000	12 STD.	675,000
KILGORE HERALD	6,258	8 TAB.	6,258
MARSHALL NEWS MESSENGER	11,756	8 STD.	23,512
MOUNT PLEASANT TIMES	3,000	8 TAB.	3,000
ORANGE LEADER	6,379	8 STD.	12,758
PARIS NEWS	12,500	8 STD.	25,000
PORT ARTHUR NEWS	23,383	12 STD.	73,149
S. N. ANGELO STANDARD TIMES	35,323	8 STD.	70,646
SNYDER NEWS TEXAS	6,233	8 STD.	12,466
TEXAS CITY SUN	5,031	8 STD.	10,062
TYLER COURIER TIMES	22,743	8 STD.	45,486
WACO TRIBUNE	48,000	12 STD.	144,000
WICHITA FALLS DAILY TIMES	52,000	8 STD.	104,000
HEREFORD TEXAS BRAND	2,750	8 STD.	5,500
SAN ANTONIO LIGHT	141,000	8 TAB.	141,000
TOTAL	665,496		1,846,634
<u>VIRGINIA</u>			
DANVILLE REGISTER	18,584	8 STD.	37,168
LYNCHBURG NEWS	22,720	8 STD.	45,440
MARTINSVILLE BULLETIN	8,393	8 STD.	16,786
NORFOLK VA. PILOT	140,000	12 STD.	420,000
RICHMOND TIMES DISPATCH	176,679	16 STD.	706,716
ROANOKE TIMES	80,195	10 STD.	225,487
FARMVILLE HERALD	4,200	4 STD.	4,200
NORFOLK LEADER DISPATCH	16,000	4 STD.	16,000
TOTAL	466,771		1,471,797
<u>WASHINGTON</u>			
TACOMA NEWS TRIBUNE	70,626	16 STD.	282,504
WENATCHEE WORLD	16,698	4 STD.	16,698
PASCO TRI-CITY HERALD	17,000	8 TAB.	17,000
TOTAL	843,872		2,710,927
<u>WASHINGTON, D.C.</u>			
WASHINGTON POST & T.H.	423,000	20 STD.	2,115,000
TOTAL	423,000		2,115,000

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AUGUST, 1955

HEAVY FLIGHT SURVEY

PAGE 7

1955

	CLASS	TYPE	CHRG. IN
		SECTION	A's
WEST VIRGINIA			
BRUNLEY POST HERALD	30,828	16 JAN.	61,695
CHARLESTON TELEGRAPH & SUNDAY NEWS	35,799	14 STD.	107,877
CHARLESTON GAZETTE	88,880	8 STD.	176,860
CHARLESTON MAIL	60,864	8 STD.	127,728
CHARLESTON EXPLORER	79,399	1 & 8 STD.	118,083
FARMINGTON TIMES	17,773	8 STD.	35,546
FARMINGTON HERALD ADVERTISER	90,398	1 STD.	100,716
FARMINGTON NEWS SENTINEL	42,653	11 STD.	45,714
WHEELING NEWS HERALD	50,900	11 STD.	151,300
TOTAL	401,371		873,648
WEST VIRGINIA			
WHEELING STATE JOURNAL	81,000	8 STD.	162,000
TOTAL	81,000		162,000
SUB TOTAL	11,040,306		21,277,658

SUB TOTAL 27,277,658

SPANISH 546,000

STARS & STRIPES 100,000

(GRAND) TOTAL 27,973,658

ANNUL. 1955

HEAVY TRAIL SURVEYWIN PLANT

	<u>LINE</u>	<u>TYPE</u> <u>SECTION</u>	<u>LINE IN</u> <u>4th</u>
<u>ARKANSAS</u>			
FORT SMITH TIMES RECORD	71,280	8 TAN.	71,280
LITTLE ROCK ANN. DEM. X	<u>91,979</u>	8 STD.	<u>102,878</u>
TOTAL	123,219		215,158
<u>CALIFORNIA</u>			
LOS ANGELES TIMES X	787,050	14 STD.	2,795,253
OAKLAND TRIBUNE X	379,491	16 STD.	871,954
PASADENA STAR NEWS X	35,795	8 STD.	71,790
SAN FRANCISCO CHRONICLE X	246,568	10 STD.	615,384
SANTA ROSA PRESS DEM. X	<u>30,075</u>	8 STD.	<u>56,150</u>
TOTAL	1,478,980		4,379,361
<u>COLORADO</u>			
DENVER POST & CO. X	350,108	12 STD.	1,070,324
ROCKY MT. NEWS X	155,771	24 TAN.	465,113
GRAND JUNCTION SENTINEL X	13,778	4 STD.	13,778
PUEBLO CHIEFTAIN STAR JOURNAL X	<u>35,302</u>	16 TAN.	<u>70,604</u>
TOTAL	554,959		1,600,799
<u>CONNECTICUT</u>			
BRIDGEPORT HERALD X	94,110	16 TAN.	118,220
TOTAL	94,110		118,220
<u>FLORIDA</u>			
DAYTONA BEACH NEWS JOURNAL X	23,880	8 STD.	47,760
JACKSONVILLE TIMES UNION X	148,535	12 STD.	445,605
TAMPA TRIBUNE (CP)	<u>136,666</u>	12 STD.	<u>722,798</u>
TOTAL	309,081		913,363
<u>ILLINOIS</u>			
CHICAGO TRIBUNE X	1,792,384	10 STD.	3,480,950
TOTAL	1,792,384		3,480,950
<u>INDIANA</u>			
SOUTH BEND TRIBUNE X	111,558	16 STD.	446,252
TOTAL	111,558		446,252

AUGUST, 1955

READY PRINT SURVEYPAGE 2OWN PLANT

	CIRC.	TYPE SECTION	CIRC. IN 4's
<u>IOWA</u>			
DES MOINES REGISTER TRIBUNE X	521,152	10 STD.	1,302,380
TOTAL	521,152		1,302,380
<u>KANSAS</u>			
GREAT BEND TRIBUNE	8,599	4 STD.	8,599
TOTAL	8,599		8,599
<u>KENTUCKY</u>			
OWENSBORO MESSENGER	23,412		23,412
TOTAL	23,412		23,412
<u>LOUISIANA</u>			
NEW ORLEANS TIMES X	276,265	12 STD.	828,795
NEW ORLEANS STATE X	88,802	8 STD.	176,604
TOTAL	365,068		1,005,401
<u>MASSACHUSETTS</u>			
SPRINGFIELD SUN REPUBLICAN X	106,753	12 STD.	320,259
TOTAL	106,753		320,259
<u>MINNESOTA</u>			
ALBERT LEA TRIBUNE	9,356	4 STD.	9,356
MINNEAPOLIS TRIBUNE X	621,792	12 STD.	1,865,376
TOTAL	631,148		1,874,732
<u>MISSISSIPPI</u>			
MERIDIAN STAR X	20,255	4 STD.	20,255
TOTAL	20,255		20,255
<u>MISSOURI</u>			
INDEPENDENCE NEWS	855	8 STD.	1,730
JEFFERSON CITY POST TRIBUNE	13,505	4 STD.	13,505
ST. LOUIS POST DISPATCH ROTO X	473,618	12 STD.	1,420,854
TOTAL	487,988		1,435,089

August 1955

READY PRINT SURVEY

PAGE 3

Q/R PLANT

	CIRC.	TYPE SECTION	CIRC. IN 4's
<u>MONTANA</u>			
BILLINGS GAZETTE X	35,332	10 STD.	88,330
GREAT FALLS TRIBUNE X	36,300	8 TAB.	36,300
MISSOULA SENTINEL X	16,495	8 STD.	32,990
TOTAL	88,027		157,520
<u>NEBRASKA</u>			
LINCOLN JOURNAL STAR X	49,293	12 STD.	147,879
OMAHA WORLD HERALD X	361,246	12 STD.	783,738
TOTAL	310,539		931,617
<u>NEW YORK</u>			
ELMIRA SUN TELEGRAPH & BURLINGAME	48,443	12 STD.	145,329
BROOKLYN EAGLE	164,227	16 TAB.	328,454
NEW YORK SUN NEWS X	3,652,302	16 TAB.	7,304,604
TOTAL	3,864,972		7,778,387
<u>NORTH CAROLINA</u>			
CHARLOTTE NEWS X	69,014	8 TAB.	69,014
TOTAL	69,014		69,014
<u>OHIO</u>			
COSHOCTON TRIBUNE	10,305	4 STD.	10,305
TOTAL	10,305		10,305
<u>OKLAHOMA</u>			
ENID NEWS X	19,940	4 STD.	19,990
HENRYETTA FREE LANCE	3,998	8 TAB.	3,998
HUSHOGEE TIMES DEM.	15,255	16 TAB.	30,510
STILLWATER NEWS PRESS	7,387	12 STD.	14,774
OKLAHOMA CITY OKLAHOMAN X	266,593	8 STD.	793,779
TOTAL	311,223		863,051
<u>OREGON</u>			
PORTLAND OREGONIAN X	294,216	16 STD.	1,176,864
PORTLAND JOURNAL X	214,380	16 STD.	857,520
TOTAL	508,596		2,034,384
<u>PENNSYLVANIA</u>			
PHILADELPHIA BULLETING X	699,777	24	4,198,662
PHILADELPHIA INQUIRER X RSTO	1,146,321	16 STD.	4,575,284
PITTSBURGH PRESS X	472,163	16 STD.	1,888,412
TOTAL	2,318,201		10,662,358

AUGUST, 1955

READY PRINT SURVEY

PAGE 4

OWN PLANT

	CIRC.	TYPE SECTION	CIRC. IN 4's
<u>TENNESSEE</u>			
MEMPHIS COMMERCIAL APPEAL X	251,361	12 STD.	754,083
TOTAL	251,361		754,083
<u>TEXAS</u>			
BEAUMONT ENTERPRISE X	71,394	16 STD.	285,776
GALVESTON TRIBUNE X	23,027	12 STD.	69,051
GRANDWATER MINOR	4,534	8 TAB.	4,534
LAREDO TIMES	15,191	28 TAB.	53,168
TOTAL	339,471		412,599
<u>UTAH</u>			
SALT LAKE CITY TRIBUNE X	174,786	12 STD.	534,358
TOTAL	174,786		534,358
<u>VIRGINIA</u>			
NEW PORT NEWS PRESS <i>SOUTHERN COLOR</i>	43,600	8 STD.	87,200
TOTAL	43,600		87,200
<u>WASHINGTON</u>			
SEATTLE TIMES X	237,502	16 STD.	950,008
SPOKANE SPOKESMAN X	141,548	12 STD.	424,644
WALLA WALLA UNION BULLETIN	16,004	8 TAB.	16,004
YAKIMA HERALD	31,405	4 STD.	31,405
BILLINGHAM HERALD	10,376	4 STD.	20,376
OLYMPIA OLYMPIAN	10,682	4 STD.	10,682
TOTAL	457,517		1,453,119
<u>WISCONSIN</u>			
MILWAUKEE JOURNAL X	471,883	12 STD.	1,415,649
TOTAL	471,883		1,415,649
GRAND TOTAL O.P.	15,229,445		44,208,581
<u>CANADA</u>			
WINNIPEG FREE PRESS	113,000	32 TAB.	452,000
LE SOLIEL	11,000	18 TAB.	249,777
VICTORIA DAILY COLONIST	51,000	12 TAB.	76,500
THE VANCOUVER PROVIDENCE	194,000	24 TAB.	582,000

AUGUST, 1955

READY PRINT SURVEY

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Q/ZL PLANT

	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
<u>CANADA (CON'T)</u>			
CALGARY ALBERTAN	33,000	16 TAB.	66,000
THE WINDSOR STAR	74,000	12 TAB.	111,000
LA PATRIA MONTREAL	28,000	16 TAB.	56,000
SASKATOON STAR PHOENIX	36,000	8 TAB.	36,000
REGINA LEADER POST	45,000	8 TAB.	45,000
WINNIPEG TRIBUNE	70,000	16 TAB.	140,000
EDMONTON JOURNAL	89,000	4 STD.	89,000
OTTAWA	<u>57,500</u>		
TOTAL	344,000		<u>1,903,277</u>

GRAND TOTAL O.P. & CANADA

15,073,445

46,111,858

AUGUST, 1925

READY PRINT SURVEY
SOUTHERN COLOR

	CIRC.	TYPE SECTION	CIRC. IN 4's
<u>ALABAMA</u>			
ANNISTON STAR	17,801	8 STD.	35,602
TOTAL	17,801		35,602
<u>FLORIDA</u>			
TALLAHASSEE DEM.	13,706	8 STD.	27,412
WEST PALM BEACH POST TIMES	28,798	8 STD.	57,596
TOTAL	42,504		85,008
<u>GEORGIA</u>			
ALBANY HERALD	19,078	8 STD.	38,156
TOTAL	19,078		38,156
<u>NORTH CAROLINA</u>			
DURLINGTON TIMES NEWS	15,103	8 STD.	30,206
FAYETTEVILLE OBSERVER	23,123	8 STD.	46,246
GASTONIA GAZETTE	19,147	8 STD.	38,294
HIGH POINT ENTERPRISE	21,252	8 STD.	42,504
ROCKY MT. TELEGRAM	13,648	8 STD.	27,296
SALISBURY POST	17,070	8 STD.	34,140
TOTAL	109,343		218,666
<u>SOUTH CAROLINA</u>			
FLORENCE NEWS	14,140	8 STD.	28,280
TOTAL	14,140		28,280
<u>TENNESSEE</u>			
JOHNSON CITY PRESS	19,307	8 STD.	38,614
TOTAL	19,307		38,614
<u>VIRGINIA</u>			
PETERSBURG PROGRESS INDEX	16,694	8 STD.	33,388
TOTAL	16,694		33,388
GRAND TOTAL	238,867		477,714

AUGUST, 1955READY PRINT SURVEYWORLD COLOR

	CIRC.	SECTION	CIRC. IN 4's
<u>COLORADO</u>			
FORT COLLINS COLORADOAN	7,020	8 TAB.	7,020
TOTAL	7,020		7,020
<u>IDaho</u>			
TWIN FALLS TIMES NEWS	19,629	8 TAB.	19,629
TOTAL	19,629		19,629
<u>ILLINOIS</u>			
CARBONDALE SOUTHERN ILLINOISAN	17,729	8 STD.	35,458
CHAMPAIGN URBANA COURIER	24,827	8 STD.	49,654
DECATUR HERALD REVIEW	53,541	8 STD.	107,081
EAST ST. LOUIS JOURNAL	30,085	8 STD.	60,172
SPRINGFIELD SAM JOURNAL	65,108	16 TAB.	130,216
TOTAL	191,291		382,581
<u>KANSAS</u>			
KANSAS CITY KANSAN	28,185	8 STD.	56,370
TOTAL	28,185		56,370
<u>LOUISIANA</u>			
BATON ROUGE ADVOCATE	43,353	12 STD.	130,059
TOTAL	43,353		130,059
<u>MISSOURI</u>			
SPRINGFIELD NEWS LEADER	57,309	8 STD.	114,618
TOTAL	57,309		114,618
<u>NEBRASKA</u>			
BEATRICE SUN	9,981	8 TAB.	9,981
GRAND ISLAND INDEPENDENT	18,741	8 TAB.	18,741
TOTAL	28,722		28,722

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AUGUST, 1955READY PRINT SURVEY

1 PAGE 2

WORLD COLOR

	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
<u>OKLAHOMA</u>			
SHAWNEE STAR ✓	11,664	8 TAB.	11,664
TOTAL	11,664		11,664
<u>TEXAS</u>			
MEXIA NEWS ✓	2,896	8 TAB.	2,896
TOTAL	2,896		2,896
GRAND TOTAL	390,068		753,599

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AUGUST, 1955

READY PRINT TOTALS IN 4's

ACME

ARIZONA	511,105
ARKANSAS	72,797
CALIFORNIA	2,459,777
COLORADO	98,640
IDAHO	191,538
KANSAS	42,411
LOUISIANA	8,573
MISSISSIPPI	5,756
MONTANA	65,870
NEVADA	119,238
NEW MEXICO	179,697
OKLAHOMA	89,361
OREGON	21,978
TEXAS	1,011,926
UTAH	78,804
WYOMING	<u>44,246</u>
TOTAL	5,001,714

AUGUST, 1955

READY PRINT TOTALS IN 4'sBUFFALO COLOR

ALABAMA	86,387
COLORADO	3,385
FLORIDA	141,783
GEORGIA	5,982
ILLINOIS	1,231,823
INDIANA	780,532
IOWA	58,588
KANSAS	6,375
KENTUCKY	15,801
MISSISSIPPI	5,237
MONTANA	9,582
NEW JERSEY	53,734
NEW MEXICO	8,625
NEW YORK	43,318
NORTH CAROLINA	8,685
OHIO	375,516
OKLAHOMA	32,804
SOUTH DAKOTA	23,220
TENNESSEE	332,418
TEXAS	32,196
VIRGINIA	<u>21,762</u>
TOTAL	3,289,032

AUGUST, 1955

READY PRINT TOTALS IN 4'sEASTERN COLOR

CONNECTICUT	1,048,735
FLORIDA	9,325
MAINE	147,198
MASSACHUSETTS	863,280
NEW HAMPSHIRE	69,234
NEW JERSEY	829,425
NORTH CAROLINA	266,480
RHODE ISLAND	<u>447,662</u>
TOTAL	3,681,339

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AUGUST, 1955

READY PRINT TOTALS IN 4's

FORT WORTH

TEXAS

1,559,556

TOTAL

1,559,556

AUGUST, 1955READY PRINT TOTALS IN 4'sGREATER BUFFALO

ALABAMA	215,412
ARKANSAS	14,801
FLORIDA	350,957
GEORGIA	1,442,757
ILLINOIS	1,443,317
INDIANA	1,554,073
IOWA	292,815
KANSAS	2,700
KENTUCKY	623,224
LOUISIANA	5,399
MARYLAND	1,079,991
MASSACHUSETTS	1,481,640
MICHIGAN	3,246,000
MINNESOTA	610,904
MISSOURI	2,147,571
MONTANA	4,777
NORTH DAKOTA	122,112
NEW MEXICO	9,944
NEW YORK	3,949,963
NORTH CAROLINA	4,063
OHIO	4,455,180
PENNSYLVANIA	717,089
SOUTH DAKOTA	127,362
TENNESSEE	483,011
TEXAS	1,651,441

AUGUST, 1955READY PRINT TOTALS IN 4'sGREATER BUFFALO (CON'T)

VERMONT	12,842
WASHINGTON	18,200
WASHINGTON, D.C.	683,110
WISCONSIN	<u>92,819</u>
	26,843,474
CANADA	<u>1,954,850</u>
TOTAL	28,798,324

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AUGUST, 1955

READY PRINT TOTALS IN 4's

HEARST

CALIFORNIA	4,097,456
ILLINOIS	2,635,927
MARYLAND	1,445,141
MASSACHUSETTS	1,643,073
MICHIGAN	1,584,027
NEW YORK	3,379,971
TEXAS	493,500
WASHINGTON	923,408
WISCONSIN	<u>797,755</u>
TOTAL	17,00,258

READY PRINT TOTALS IN 4'sINTERNATIONAL COLOR PRINTING CO.

ALABAMA	925,324
ARKANSAS	263,467
COLORADO	18,806
FLORIDA	1,488,321
GEORGIA	718,186
IDAHO	15,000
ILLINOIS	655,471
INDIANA	254,502
IOWA	164,485
KANSAS	953,292
KENTUCKY	181,713
LOUISIANA	610,400
MAINE	309,000
MARYLAND	88,548
MASSACHUSETTS	124,084
MICHIGAN	316,000
MISSISSIPPI	457,889
MISSOURI	170,056
NEW JERSEY	1,025,506
NORTH DAKOTA	68,500
NEW MEXICO	7,309
NEW YORK	4,571,220
NORTH CAROLINA	1,247,298

AUGUST, 1955READY PRINT TOTALS IN 4'sINTERNATIONAL COLOR PRINTING CO.

OHIO	1,506,995
OKLAHOMA	581,032
PENNSYLVANIA	2,126,151
SOUTH CAROLINA	819,137
SOUTH DAKOTA	101,286
TENNESSEE	683,401
TEXAS	1,846,634
VIRGINIA	1,471,797
WASHINGTON	316,200
WASHINGTON, D.C.	2,115,000
WEST VIRGINIA	873,648
WISCONSIN	<u>162,000</u>
	27,237,658
SPANISH	546,000
STARS & STRIPES	<u>190,000</u>
TOTAL	27,973,658

AUGUST, 1955READY PRINT TOTALS IN 4'sQ'IN PLANT

ARKANSAS	215,158
CALIFORNIA	4,337,341
COLORADO	1,600,577
CONNECTICUT	118,220
FLORIDA	873,360
ILLINOIS	3,480,950
INDIANA	446,253
IOWA	1,302,380
KANSAS	8,509
KENTUCKY	23,412
LOUISIANA	1,005,401
MASSACHUSETTS	320,256
MINNESOTA	1,874,732
MISSISSIPPI	20,255
MISSOURI	1,436,083
MONTANA	157,520
NEBRASKA	931,617
NEW YORK	7,778,387
NORTH CAROLINA	69,014
OHIO	10,305
OKLAHOMA	863,051
OREGON	2,034,384
PENNSYLVANIA	10,662,358

AUGUST, 1955GRAND TOTAL TONNAGE

PAGE 2

OWN PLANT

TENNESSEE	754,083
TEXAS	412,559
UTAH	534,350
VIRGINIA	87,200
WASHINGTON	1,435,119
WISCONSIN	<u>1,415,649</u>
TOTAL	44,208,581
CANADA	<u>1,903,277</u>
GRAND TOTAL	46,111,858

AUGUST, 1955READY PRINT TOTALS IN 4'sSOUTHERN COLOR

ALABAMA	35,602
FLORIDA	35,008
GEORGIA	38,156
NORTH CAROLINA	218,666
SOUTH CAROLINA	28,280
TENNESSEE	38,614
VIRGINIA	<u>33,388</u>
TOTAL	477,714

AUGUST, 1955

READY PRINT TOTALS IN 4'sWORLD COLOR

COLORADO	7,020
IDAHO	19,629
ILLINOIS	382,581
KANSAS	56,370
LOUISIANA	130,059
MISSOURI	114,618
NEBRASKA	28,722
OKLAHOMA	11,664
TEXAS	<u>2,896</u>
TOTAL	753,559

August, 1955

READY PRINT SUMMARY - CIRCULATION IN 4's

STATE	J.C.P.	G.B.P.	B.C.	A.C.	F.C.	W.C.	S.C.	F.H.	HEARST.	O.P.
ALABAMA	925,324	215,412	85,387				35,602			
ARIZONA				511,105						
ARKANSAS	253,467	14,801		72,797						215,158
CALIFORNIA				2,459,777					4,097,456	4,337,341
COLORADO	18,806		3,385	98,640		7,020			1,600,979	
CONNECTICUT					1,048,735					118,220
DELAWARE										
FLORIDA	1,488,321	350,977	141,783		9,325		85,008			873,363
GEORGIA	718,186	1,442,757	5,982				38,156			
IDAH0	15,000			191,538		19,629				
ILLINOIS	655,471	1,443,317	1,231,823			382,581			2,635,927	3,480,950
INDIANA	254,502	1,554,073	780,532							466,253
IOWA	164,485	292,815	58,588							1,302,380
KANSAS	953,292	2,700	6,375	42,411		56,370				8,599
KENTUCKY	181,713	623,224	15,801							23,412
LOUISIANA	610,400	5,399		8,573		130,099				1,005,401
MAINE	309,000				147,198					
MARYLAND	88,548	1,079,991							1,445,141	
MASSACHUSETTS	124,064	1,481,640			863,280				1,643,073	349,399

1807

READY PRINT SUMMARY - CIRCULATION IN 4's

STATE	I.C.P.	O.B.P.	B.C.	ACH	F.C.	W.C.	S.C.	F.M.	HEARST	O.P.
ALABAMA	316,000	3,246,000							1,584,027	1,874,732
MINNESOTA		610,904								20,255
MISSISSIPPI	457,889		5,237	5,756						1,436,083
MISSOURI	170,056	2,147,571				114,618				197,520
MONTANA		4,777	9,582	65,870						931,617
NEBRASKA						28,722				
NEVADA				119,238						
NEW HAMPSHIRE					69,234					
NEW JERSEY	1,025,506		53,734		839,425					
NEW MEXICO	7,309	9,944	8,625	179,697						
NEW YORK	4,571,220	3,949,963	43,318							
NORTH CAROLINA	1,247,298	4,685	8,685		266,480		218,666	3,379,971	7,778,387	69,014
NORTH DAKOTA	68,500	122,112								
OHIO	1,505,995	4,455,180	375,516							10,305
OKLAHOMA	581,032		32,804	89,351						863,051
OREGON				21,978		11,664				2,034,384
PENNSYLVANIA	2,125,151	717,089								10,662,358
RHODE ISLAND					447,662					
SOUTH CAROLINA	819,137						28,280			

AUGUST, 1955

READY PRINT SUMMARY - CIRCULATION IN A's

Page 3

STATE	I.C.P.	O.B.P.	B.C.	ACNE	E.C.	W.A.	S.C.	F.W.	HEARST	O.P.
SOUTH DAKOTA	101,285	127,352	23,220							
TENNESSEE	683,401	483,011	332,418				38,614			754,083
TEXAS	1,846,634	1,651,441	32,196	1,011,926		2,896		1,999,556	493,500	412,559
UTAH				78,804						534,350
VERMONT			12,842							
VIRGINIA	1,471,797		11,762					33,388		87,200
WASHINGTON	316,200		18,200						923,408	1,435,119
WASHINGTON, D.C.	2,115,000		683,110							
WEST VIRGINIA	873,648									
WISCONSIN	162,000	92,819							797,755	1,415,649
WYOMING				44,246						

TOTAL	27,237,658	26,843,474	3,289,032	5,001,714	3,681,339	753,559	477,714	1,999,556	17,000,298	44,208,581
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TOTAL	27,237,658	26,843,474
SPANISH	546,000	1,954,850
STARS & STRIPES	190,000	

O.B.P.

TOTAL	26,843,474
CANADA	1,954,850

O.P.

TOTAL	44,208,581
CANADA	1,954,850

GRAND TOTAL 46,111,868

READY PRINT SURVEY
ALABAMA

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
ANNISTON STAR	S.C.	17,801	8 STD.	35,602
DOTHAN EAGLE	B.C.P.	21,178	8 STD.	42,356
FLORENCE TRI-CITY TIMES	B.C.P.	17,108	8 STD.	34,216
MOBILE PRESS REGISTER	G.B.P.	85,005	10 STD.	212,512
SELMA TIMES JOURNAL	B.C.P.	9,815	8 TAB.	9,815
TROY HERALD MESSENGER	NO COMIC SECTION —			—
TALLADEGA DAILY HOME	G.B.P.	<u>± 2,900</u>	8 TAB.	<u>± 2,900</u>
SUB. TOTAL		153,807		337,401

L.G.P.

BIRMINGHAM NEWS		11,270	12 STD.	633,810
DECATUR DAILY		13,650	8 STD.	27,300
GADSDEN TIMES		21,895	8 STD.	43,790
HUNTSVILLE TIMES		18,704	8 STD.	37,408
MONTGOMERY ADV.		72,948	8 STD.	148,896
TUSCALOOSA NEWS		15,560	8 STD.	31,120
ANDALUSIA COVINGTON DISPATCH		<u>3,000</u>	8 TAB.	<u>3,000</u>
SUB TOTAL		157,027		925,324
GRAND TOTAL		310,834		1,262,725

READY PRINT SURVEY
ARKANSAS

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. 1943</u>
EL DONADO NEWS	ACME	9,973	16 TAB.	19,946
FORT SMITH TIMES REC.	THEIR OWN	31,280	8 TAB.	31,280
HELENA WEST HELENA WORLD	_____	_____	_____	_____
HOT SPRINGS SENT. REC.	ACME	13,280	16 TAB.	26,560
LITTLE ROCK ARK. DEM.	THEIR OWN	91,939	8 STD.	183,878
PINE BLUFF COMMERCIAL	G.B.P.	14,801	8 TAB.	14,801
TEXARKANA GAZETTE NEWS	ACME	<u>25,291</u>	8 TAB.	<u>25,291</u>
SUB TOTAL		187,564		302,756
	<u>L.C.P.</u>			
LITTLE ROCK ARK. GAZETTE		<u>105,387</u>	10 STD.	<u>262,467</u>
SUB TOTAL		105,387		262,467
GRAND TOTAL		292,951		565,223

NEWSPAPER SURVEY
FLORIDA

NAME	WHERE PRINTED	CIRC.	TYPE SECTION	CIRC. IN '40
DAYTONA BEACH NEWS JOURNAL	THEIR OWN	23,880	8 STD.	47,760
DELAND SUN NEWS	D.C.P.	4,663	8 TAB.	4,663
FORT LAUDERDALE NEWS SENT.	D.C.P.	24,406	8 STD.	48,812
FORT MYERS NEWS PRESS	D.C.P.	9,789	8 STD.	19,578
FORT PIERCE NEWS TRIBUNE	D.C.P.	6,411	8 TAB.	6,411
JACKSONVILLE TIMES UNION	THEIR OWN	148,535	12 STD.	445,605
MELBOURNE TIMES	G.D.P.	2,645	6 STD.	3,967
MIAMI NEWS	G.D.P.	97,541	14 STD.	341,358
MIAMI BEACH SUN	E.C.P.	9,325	8 TAB.	9,325
OCALA STAR BANNER	D.C.P.	7,057	8 TAB.	7,057
PANAMA CITY NEWS HERALD	D.C.P.	14,263	8 STD.	28,526
SARASOTA HERALD TRIBUNE	D.C.P.	13,388	8 STD.	26,776
SEALAND DEM.	S.C.	13,706	8 STD.	27,412
TAMPA TRIBUNE	THEIR OWN	125,666	12 STD.	379,998
WEST PALM BEACH POST TIMES	S.C.	23,798	8 STD.	57,596
ST. AUGUSTINE REC.	D.B.P.	5,632	4 STD.	5,632
SUB TOTAL		520,696		1,460,436
	J.C.P.			
BRAIDEN HERALD		10,579	8 STD.	21,158
CLEARWATER SUN		1,914	8 STD.	19,828
GAINESVILLE SUN		1,496	4 STD.	10,496
LAKE LAND LEDGER		11,434	8 STD.	30,858
MIAMI HERALD		255,976	16 STD.	1,023,904
ORLANDO SENTINEL STAR		56,977	12 STD.	170,931
OSWEGO JOURNAL NEWS		46,000	8 STD.	92,000
ST. PETERSBURG TIMES		21,568	12 STD.	178,704
SUB TOTAL		431,944		1,438,221
GRAND TOTAL		952,640		3,098,657

READY PRINT SURVEY
GEORGIA

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
ALBANY HERALD	S.C.	19,078	8 STD.	38,156
ATLANTA JOURNAL CON.	G.S.P.	180,919	12 STD.	1,442,797
GAINESVILLE TIMES	B.C.P.	5,982	8 TAB.	5,982
ROCK NEWS JOURNAL	CUNEO PRESS	<u>11,408</u>	8 TAB.	<u>11,408</u>
SUB TOTAL		17,387		1,498,303
	<u>I.C.P.</u>			
AUGUSTA CHRONICAL HERALD		61,235	16 STD.	244,940
COLUMBUS LEDGER INQUIRER		45,526		135,508
MACON TELEGRAPH NEWS		50,860		152,580
SAVANNAH NEWS PRESS		58,686		176,058
WAYCROSS JOURNAL		<u>2,000</u>	8 TAB.	<u>8,000</u>
SUB TOTAL		226,317		716,186
GRAND TOTAL		741,704		2,215,489

READER PRINT SURVEY
LOUISIANA

PAPER	WHERE PRINTED	CARR.	TYPE SECTION	CIRC. IN 4's
BATON ROUGE ADVOCATE	M.C.	43,353	12 STD.	130,059
BOSALUBA NEWS	G.D.P.	5,399	8 TAB.	5,399
NEW ORLEANS T. PICAYUNE	THEIR CO.	275,255	12 STD.	828,795
NEW ORLEANS STATES	THEIR CO.	88,803	8 STD.	176,506
OPLOUBAS WORLD	ACME	<u>8,573</u>	8 TAB.	<u>3,573</u>
SUB TOTAL		622,390		1,032,432

L.C.P.

LAKE CHARLES AMERICAN PRESS		22,699	8 STD.	45,398
MONROE WORLD		32,025	8 STD.	64,050
NEW ORLEANS ITEM		107,691	8 STD.	215,382
SHREVEPORT TIMES		<u>95,190</u>	12 STD.	<u>285,570</u>
SUB TOTAL		257,605		610,400
GRAND TOTAL		879,995		1,642,932

NEWSPRINT SURVEY
 MISSISSIPPI

PAPER	WHERE PRINTED	DATE	TYPE SECTION	Circ. in 4's
CORINTH CO RHYTHMIC	I.C.P.	5,237	8 TAB.	5,237
MERIDIAN STAR	THEIR OWN	20,255	4 STD.	20,255
NATCHEZ TIMES	AGUE	5,756	8 TAB.	5,756
SUB TOTAL		31,248		31,248
<u>I.C.P.</u>				
GREENVILLE DELTA DEM. TIMES		11,631	8 TAB.	11,631
NATCHEZ DEM.		5,558	8 TAB.	5,558
JACKSON STATE TIMES		45,000	8 STD.	90,000
TUPELO MISS. HERALD		12,500	8 STD.	25,000
VICKSBURG MISS. HERALD		9,700	8 TAB.	5,700
JACKSON CLARION LEDGER		79,000	16 STD.	216,000
SUB TOTAL		153,389		457,389
GRAND TOTAL		34,637		489,137

REALY PRINT SURVEY
NORTH CAROLINA

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
BURLINGTON TIMES NEWS	S.C.	15,103	8 STD.	30,206
CHARLOTTE NEWS	THEIR OWN	69,014	8 TAB.	69,014
CONCORD TRIBUNE	B.C.P.	8,685	8 TAB.	8,685
FAYETTEVILLE OBSERVER	S.C.P.	23,123	8 STD.	46,226
GASTONIA GAZETTE	S.C.P.	19,147	8 STD.	38,294
GREENSBORO NEWS	E.C.P.	38,830	12 STD.	266,480
HIGH POINT ENTERPRISE	S.C.P.	21,252	8 STD.	42,504
ROANOKE RAPIDS HERALD	G.B.P.	4,063	8 TAB.	4,063
ROCKY Mt. TELEGRAM	S.C.P.	13,648	8 STD.	27,296
SALISBURY POST	S.C.P.	<u>17,070</u>	8 STD.	<u>34,140</u>
SUB TOTAL		279,935		566,908
<u>I.C.P.</u>				
ASHEVILLE CITIZEN TIMES		52,367	8 STD.	104,734
CHARLOTTE OBSERVER		116,180	12 STD.	438,540
DURHAM HERALD		38,801	8 STD.	73,602
ELIZABETH CITY ADVANCE		7,494	8 TAB.	7,494
HENDERSON DISPATCH		4,927	8 TAB.	4,927
KANNAPOLIS INDEPENDENT		10,359	8 STD.	20,718
RALEIGH NEWS & OBSERVER		139,607	10 STD.	324,017
RALEIGH TIMES		15,179	8 TAB.	15,179
WILMINGTON		38,250	8 STD.	56,500
WOREHEAD CITY		3,500	8 TAB.	3 500
WINSTON SALEM		<u>16,122</u>	12 STD.	<u>198,387</u>
SUB TOTAL		512,793		1,247,298
GRAND TOTAL		712,728		1,814,206

READY PRINT SURVEY
OKLAHOMA

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CARR.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
ADA NEWS	D.C.P.	9,093	8 TAB.	9,093
BARTTESVILLE EXAMINER	SOUTHWESTERN PRESS	9,492	8 TAB.	9,492
CHICKASAW EXPRESS	D.C.P.	6,135	8 TAB.	6,135
CLINTON NEWS	ACME	4,967	8 TAB.	4,967
CUSHING CITIZEN	ACME	4,398	8 TAB.	4,398
DUNCAN BANNER	ACME	9,431	16 TAB.	18,862
DURANT DEM.	ACME	6,653	8 TAB.	6,653
ELK CITY NEWS	ACME	4,888	8 TAB.	4,888
ENID NEWS	THEIR OWN	19,900	4 STD.	19,900
GUTHRIE LEADER	ACME	5,176	8 TAB.	5,176
GUYMON HERALD	ACME	3,346	8 TAB.	3,346
HENRYETTA FREE LANCE	THEIR OWN	3,996	8 TAB.	3,996
HOBART DEM. CHIEF				
LANTON CONSTITUTION PRESS	ACME	16,586	16 TAB.	33,136
MUSKOGEE TIMES DEM.	THEIR OWN	15,255	16 TAB.	30,510
NORMAN TRANSCRIPT	D.C.P.	6,363	8 TAB.	6,363
OKLAHOMA CITY OKLAHOMAN	THEIR OWN	264,993	12 STD.	793,779
OKMULGEE TIMES	FORT SMITH	6,997	8 TAB.	6,997
PONCA CITY NEWS	D.C.P.	11,213	8 TAB.	11,213
SAYRE HEADLIGHT JNL.	ACME	2,884	8 TAB.	2,884
SEMINOLE PRODUCER	ACME	5,051	8 TAB.	5,051
SHAWNEE STAR	W.C.	11,664	8 TAB.	11,664
STILLWATER NEWS PRESS	THEIR OWN	<u>7,387</u>	8 STD.	<u>14,774</u>
SUB TOTAL		435,470		1,013,279
	<u>D.C.P.</u>			
TULSA WORLD		145,253	16 STD.	<u>581,032</u>
SUB TOTAL		145,253		581,032
GRAND TOTAL		580,723		1,594,311

DAILY PRINT SURVEY
SOUTH CAROLINA

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>Circ. IN 4's</u>
FLORENCE NEWS	S.C.	14,140	8 STD.	28,280
SUB TOTAL		14,140		28,280
<u>I.O.P.</u>				
ANDERSON INDEPENDENT MAIL		42,170	8 STD.	84,340
CHARLESTON NEWS & COURIER		60,533	8 STD.	121,066
COLUMBIA STATE		83,108	12 STD.	249,324
GREENVILLE NEWS		78,845	12 STD.	236,535
ORANGEDURG TIMES & DEMO		5,796	8 STD.	11,556
SPARTANBURG HERALD JOURNAL		37,908	8 STD.	75,816
CHARLESTON EVENING POST		31,500	4 STD.	31,500
SUB TOTAL		299,862		819,137
GRAND TOTAL		314,002		847,417

READY PRINT SURVEY
TENNESSEE

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
ELIZABETHAN STAR	B.C.P.	5,802	8 TAB.	5,802
JOHNSON CITY PRESS	S.C.	19,307	8 STD.	38,614
KNOXVILLE SENTINEL	B.C.P.	108,872	12 STD.	326,616
MEMPHIS COMMERCIAL APPEAL	THEIR OWN	251,361	12 STD.	754,083
MORRISTOWN GAZETTE MAIL	G.B.P.	4,661	8 TAB.	4,661
NASHVILLE TENNESSEAN	G.B.P.	<u>191,340</u>	10 STD.	<u>478,350</u>
SUB TOTAL		581,343		1,608,126
	<u>L.C.P.</u>			
BRISTOL HERALD		23,879	8 STD.	47,798
CHATTANOOGA TIMES		88,764	12 STD.	266,292
JACKSON SUN		15,130	8 STD.	30,260
KINGSPORT TIMES		30,561	12 STD.	61,683
KNOXVILLE JOURNAL		88,456	12 STD.	265,368
GREENVILLE DAILY SUN		<u>12,000</u>	4 STD.	<u>12,000</u>
SUB TOTAL		148,790		683,401
GRAND TOTAL		730,133		2,291,527

READY PRINT SURVEY
TEXAS

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
ALICE ECHO	ACME	5,491	8 TAB.	5,491
ARMILLO NEWS GLOBE	ACME	58,649	12 STD.	176,047
BEAUMONT ENTERPRICE	THEIR OWN	71,394	16 STD.	285,776
BIRMINGHAM FAVORITE	ACME	4,577	8 TAB.	4,577
BIRMINGHAM HERALD	D.C.P.	10,369	8 STD.	20,738
BRECKENRIDGE AMERICAN				
BRENNAN BANNER	ACME	5,578	8 TAB.	5,578
BROWNVILLE HERALD	ACME	13,000	16 TAB.	26,000
BROOKWOOD BULLETIN	ACME	9,040	8 TAB.	9,040
BRYAN EAGLE	NEA-CLEVELAND	6,900	8 TAB.	6,900
DALLAS NEWS	G.D.P.	197,563	12 STD.	592,689
DALLAS TIMES HERALD	FORT WORTH	154,564	16 STD.	658,256
DEL RIO NEWS HERALD	ACME	4,045	8 TAB.	4,045
EL PASO TIMES	ACME	67,886	16 STD.	271,544
FORT WORTH STAR TELEGRAM	THEIR OWN	125,325	16 STD.	901,300
GAINESVILLE REGISTER	ACME	5,300	8 TAB.	5,300
GALVESTON TRIBUNE	THEIR OWN	23,027	12 STD.	69,051
GLADWATER MIRROR	THEIR OWN	4,534	8 TAB.	4,534
GONZALES INQUIRER	ACME	2,654	8 TAB.	2,654
GREENVILLE HERALD	NEA-CLEVELAND	8,279	8 TAB.	8,279
HARLINGTON MORNING STAR	ACME	13,000	16 TAB.	26,000
HENDERSON NEWS	ACME	6,069	8 TAB.	6,069
HILLSBORO MIRROR	G.B.P.	4,534	8 TAB.	4,534
HOUSTON CHRONICLE	G.B.P.	119,427	12 STD.	658,281
JACKSONVILLE PROGRESS	ACME	4,689	8 TAB.	4,689
KERRVILLE TIMES	ACME	3,448	8 TAB.	3,448
LAMAR REPORTER	ACME	4,020	8 TAB.	4,020

READY PRINT SURVEY
TEXAS (CONT)

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN '49</u>
LAREDO TIMES	THEIR OWN	15,191	28 TAB.	53,168
LONGVIEW JOURNAL NEWS	ACME	18,784	16 TAB.	37,358
LUBBOCK AVALANCHE	ACME	44,420	12 STD.	133,260
LUFKIN NEWS	ACME	6,933	8 TAB.	6,933
MCGALLEN EVENING MONITOR	ACME	11,000	16 TAB.	22,000
MEXIA NEWS	W.C.	2,896	8 TAB.	2,896
MIDLAND REPORTER TELEGRAM	ACME	12,642	8 STD.	25,284
ODESSA AMERICAN	ACME	22,237	16 TAB.	44,474
PALESTINE HERALD	ACME	7,490	8 TAB.	7,490
PAMPA NEWS	ACME	7,216	16 TAB.	14,432
PAMPA SPOKESMAN	D.C.P.	5,729	16 TAB.	11,458
PLAINVIEW HERALD	ACME	6,901	16 TAB.	13,802
SAN ANTONIO EXPRESS	G.B.P.	13,055	14 STD.	395,937
SHERMAN DEM.	ACME	13,136	16 TAB.	26,272
SULPHUR SPRINGS NEWS	ACME	3,206	8 TAB.	3,206
SWEETWATER REPORTER	ACME	6,234	8 TAB.	6,234
TAYLOR PRESS	ACME	6,385	8 TAB.	6,385
TEMPLE TELEGRAM	ACME	17,549	16 TAB.	35,098
TEXARKANA GAZETTE	ACME	26,291	16 TAB.	52,582
VERNON RECORD	ACME	5,823	8 TAB.	5,823
VICTORIA ADVOCATE	ACME	10,577	8 TAB.	10,577
WAXACHIE LIGHT	ACME	<u>6,000</u>	8 TAB.	<u>6,000</u>
SUB TOTAL		1,113,057		4,685,169

READY PRINT SURVEY
TEXAS (CONT)

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
<u>L.C.P.</u>				
ABILENE REPORTER NEWS		35,802	8 STD.	73,604
AUSTIN AMERICAN STATESMAN		19,731	12 STD.	149,193
BIG SPRING HERALD		8,600	8 STD.	17,200
CORPUS CHRISTI CALLER TIMES		67,007	8 STD-4 STD.	201,000
DENISON HERALD		10,414	8 STD.	20,828
DETON REC. CHRONICLE		11,465	8 STD.	16,930
GREENVILLE BANNER		8,021	8 STD.	16,042
HOUSTON POST		235,000	12 STD.	675,000
KILGORE HERALD		6,258	8 TAB.	6,258
MARSHALL NEWS MESSENGER		11,756	8 STD.	23,512
MOUNT PLEASANT TIMES		3,000	8 TAB.	3,000
GRAND LEADER		6,379	8 STD.	12,758
PARIS NEWS		12,500	8 STD.	25,000
PORT ARTHUR NEWS		33,383	12 STD.	73,149
SAN ANGELO STANDARD TIMES		35,323	8 STD.	70,646
SNYDER NEWS TEXAS		6,233	8 STD.	12,466
TEXAS CITY SUN		5,031	8 STD.	10,062
TYLER COURIER TIMES		22,743	8 STD.	45,486
WACO TRIBUNE		18,000	12 STD.	144,000
WICHITA FALLS DAILY TIMES		52,000	8 STD.	104,000
WHEATFORD TEXAS BRAND		2,750	8 STD.	5,500
SAN ANTONIO LIGHT		<u>141,000</u>	8 TAB.	<u>141,000</u>
SUB TOTAL		605,496		1,846,634
GRAND TOTAL		2,178,553		6,531,803

READY PRINT SURVEY
VIRGINIA

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN '13</u>
PETERSBURG PROGRESS INDEX	S.C.P.	16,694	8 STD.	33,388
PULASKI SOUTHWEST TIMES	B.C.P.	4,853	8 TAB.	4,853
SUFFALK NEWS HERALD	B.C.P.	6,899	8 TAB.	6,899
NEWPORT NEWS PRESS	THEIR OWN	<u>43,600</u>	8 STD.	<u>87,200</u>
SUB TOTAL		72,056		132,350

L.C.P.

DANVILLE REGISTER		18,584	8 STD.	37,168
LYNCHBURG NEWS		22,720	8 STD.	45,440
MARTINSVILLE BULLETIN		8,393	8 STD.	16,786
NORFOLK VA. PILOT		140,000	12 STD.	420,000
RICHMOND TIMES DISPATCH		176,679	16 STD.	706,716
ROANOKE TIMES		80,195	10 STD.	225,487
FARMVILLE HERALD		4,200	4 STD.	4,200
NORFOLK LEADER DISPATCH		<u>16,000</u>	4 STD.	<u>16,000</u>
SUB TOTAL		466,771		1,471,797
GRAND TOTAL		538,827		1,604,147

ANALYSIS OF SUNDAY COMIC SUPPLEMENT MARKET IN TERMS OF 4 PAGE UNITS
PAGE 4 OF AFFADAVIT BY RAYMOND H. CARLSON FOR YEAR 1955
REVISED BY G.B.P. TO PROPERLY APPLY THE SAME FIGURES

	1 PER AFFADAVIT NO. 4'S	2 % MARKET	3 REVISED BY G.B.P. NO. 4'S	4 % MARKET	5 % OF TOTAL MARKET
ALL SUPPLEMENTS	132,001,003		130,092,585		100.0%
LESS:					
PRIVATE PLANTS			44,208,581		34.0%
COLOR COMIC PRINTERS			85,884,304	100.0%	66.0%
GREATER BUFFALO PRESS	70,799,032	100.0%			
INTERNATIONAL (KING)	28,798,324	40.6%	26,843,474	31.4%	20.8%
BUFFALO COLORPRESS (N.E.A.)	27,237,658	38.4%	27,237,658	31.7%	20.9%
EASTERN COLOR	3,289,032	4.6%	3,299,032	3.8%	2.5%
ACME COLORPRINT	3,601,379	5.2%	3,481,339	4.2%	2.8%
SOUTHERN COLORPRINT	5,001,850	7.1%	5,001,714	5.8%	3.8%
FORT WORTH	477,714	.7%	477,714	.6%	.4%
WORLD COLOR			1,999,556	1.9%	1.2%
HEARST			733,509	.9%	.6%
			17,000,258	19.7%	13.0%

COMMENT

COLUMN -3 DELETES 1,954,850 SECTIONS CHARGED TO

G.B.P. IN COLUMN -1. THESE ARE CANADIAN NEWSPAPERS

COLUMN -3 SHOWS HEARST PLANTS AS COLOR COMIC

PRINTERS, FOR THE REASON THAT THE CHICAGO

AMERICAN AND PITTSBURGH SUN-TELEGRAPH, BOTH NON-

HEARST NEWSPAPERS, ARE PRINTED IN THE HEARST

CHICAGO PLANT. THESE RUNS TOTAL 2,956,434 COPIES

IN 4'S

FURTHER HEARST PLANTS HAVING A SURPLUS CAPACITY

OF 12,500,000. THESE ARE CAPABLE OF HANDLING THIS

OUTPUT FOR KING, A HEARST DIVISION

COLUMN -5 IS THE CORRECT ANALYSIS, BECAUSE IT IS THE

TOTAL MARKET, THE FUTURE POTENTIAL MARKET, AND

THE ORIGINAL SOURCE OF THE INDUSTRY

H. T. ROSE
OFFICIAL AFFIDAVIT
U. S. DISTRICT COURT

P-63 FOR IDENT.
P-63 IN EVID.
 H. T. ROEL
 OFFICIAL REPORTER
 U. S. DISTRICT COURT

NOVEMBER 26, 1956

MR. WALTER KOEBBLER,
 GREATER BUFFALO PRESS INC.
 302 GROVE STREET,
 BUFFALO, NEW YORK

DEAR WALTER:

EACH YEAR, FOR THE PAST TEN OR FIFTEEN YEARS, WE HAVE BEEN PREPARING WHAT WE CALL A READYPRINT SURVEY TO DETERMINE WHAT WORK IS BEING DONE BY EACH OF OUR COMPETING PLANTS AND ALSO WHAT WORK IS STILL BEING DONE BY "OWN" PLANTS. WE GET OUR INFORMATION FROM VARIOUS SOURCES. FIRST OF ALL WE WRITE TO EVERY SUNDAY NEWSPAPER IN THE UNITED STATES, AND ALL SATURDAY PAPERS WHICH WE THINK MIGHT CARRY A SUPPLEMENT TO OBTAIN COPIES OF THEIR COLORED SUPPLEMENTS. WE ALSO ASK QUESTIONS AS TO WHERE THEIR SUPPLEMENTS ARE PRINTED.

ABOUT SIXTY PER CENT OF THE NEWSPAPERS ANSWER IMMEDIATELY GIVING FULL INFORMATION. ABOUT TWENTY PER CENT COME AROUND AFTER WE WRITE THE SECOND TIME AND A FINAL FEW PAPERS GIVE US NO INFORMATION WHATEVER. THEREFORE, THE SURVEY IS NOT ABSOLUTELY ACCURATE BUT I THINK CLOSE ENOUGH TO GIVE US A FAIRLY GOOD PICTURE OF HOW THINGS ARE GOING.

I DOUBT THAT IN "1955" OUR INFORMATION WAS AS COMPLETE AS IT MIGHT HAVE BEEN BECAUSE THE "1956" FIGURES SHOW THAT GREATER BUFFALO HAS AN INCREASE OF ABOUT TEN MILLION FOURS. THE ADDITIONAL WORK FROM BUFFALO COLOR AND WORLD COLOR ACCOUNTS FOR ABOUT FOUR MILLION OF THIS. THE OTHER FOUR MILLION DIFFERENCE MAY BE THE RESULT OF THE FACT THAT WE DID NOT HAVE ALL OF YOUR "1955" BUSINESS LISTED. ACME SHOW A GAIN OF 1,000,000 NOT INCLUDING OAKLAND AND SAN FRANCISCO, WHICH I BELIEVE ACME IS NOW DOING. THEREFORE, ACME'S BUSINESS IS AROUND 6,000,000 AS AGAINST 4,000,000 A FEW YEARS AGO. BUFFALO COLOR IS OUT OF THE PICTURE ENTIRELY. IN OUR SURVEY, FORT WORTH PRINTING SHOWS UP UNDER "OWN PLANT". THERE HAS BEEN LITTLE CHANGE AT EASTERN ACCORDING TO THE SURVEY FIGURES. WE HAVE GAINED ABOUT 1,000,000. WORLD COLOR HAS DROPPED APPROXIMATELY 700,000 AND SOUTHERN COLOR HAS PICKED UP ABOUT 200,000. WILMINGTON HAS PICKED UP 200,000. THE "OWN PLANT" TOTAL DROPPED FROM 65,000,000 TO 61,000,000.

THE TOTALS CANNOT BE ABSOLUTELY ACCURATE FOR THE REASON THAT SOMETIME NEWSPAPERS RUN 12-PAGES, SOMETIME 10-PAGES AND SOMETIME 16-PAGES. WE USE THE SECTION THAT IS SENT IN TO US AT THE TIME WE MAKE THE REQUEST.

BECAUSE OUR GREATEST OPPORTUNITY FOR GROWTH LIES WITH THE NEWSPAPERS NOT LISTED UNDER "OWN PLANT", I AM GOING TO ATTACH A LISTING SEPARATE FROM WHAT I HAVE ALREADY PUT INTO THE READY PRINT SURVEY (FOR THE PURPOSE OF CONVENIENCE).

WILL YOU PLEASE HAVE SOMEONE CHECK THIS BOOK OVER CAREFULLY AND LET US KNOW WHAT MAY BE FOUND REGARDING BUFFALO PRINTING.

1825

LTR. - MR. WALTER KOEBLER

-2-

NOVEMBER 26, 1956

BEST REGARDS.

SINCERELY YOURS,

JJG:MDL

JOSEPH J. GORMAN

P.S. I HAVE JUST NOTICED THAT WE HAVE SEATTLE POST INTELLIGENCER LISTED UNDER
AGNE - I DO NOT THINK THIS IS RIGHT AND I AM RECHECKING.

SUPPLEMENTS PRINTED IN "OWN PLANT":

ARKANSAS	LITTLE ROCK DEMOCRAT	181,200
CALIFORNIA	LOS ANGELES TIMES	2,443,500
	LOS ANGELES EXAMINER (H)	2,294,000
	SAN FRANCISCO EXAMINER (H)	1,750,000
	SANTA ROSA PRESS DEMOCRAT	59,000
	VALLEJO TIMES	42,600
COLORADO	DENVER POST	1,043,400
	ROCKY MOUNTAIN NEWS	960,000
	GRAND JUNCTION SENTINEL	15,000
	PUEBLO CHIEFTAIN STAR	72,800
CONNECTICUT	BRIDGEPORT HERALD	186,400
FLORIDA	DAYTONA BEACH NEWS JOURNAL	53,800
	JACKSONVILLE TIMES UNION	451,500
ILLINOIS	CHICAGO HERALD AMERICAN	2,800,000
	CHICAGO TRIBUNE	4,100,000
INDIANA	SOUTH BEND TRIBUNE	450,400 ??
IOWA	DES MOINES REGISTER TRIBUNE	1,048,000
KANSAS	GREAT BEND TRIBUNE	8,900
	PARSONS SUN	8,900
KENTUCKY	NONE	
LOUISIANA	NEW ORLEANS TIMES PICAYUNE	836,700
	NEW ORLEANS STATE	182,600
MARYLAND	BALTIMORE AMERICAN (H)	1,125,000
MASSACHUSETTS	BOSTON SUN ADVERTISER (H)	1,886,000
	SPRINGFIELD CITY REPUBLICAN	334,200
MICHIGAN	DETROIT TIMES (H)	1,826,650
MINNESOTA	MINNEAPOLIS STAR TRIBUNE	1,879,500
MISSISSIPPI	MERIDIAN STAR	20,400
MISSOURI	ST. LOUIS POST DISPATCH	1,401,000 (Roto)
MONTANA	BILLINGS GAZETTE	72,400
	MILES CITY STAR	33,800
NEBRASKA	LINCOLN JOURNAL STAR	153,000
	OMAHA HERALD	787,500
NEW MEXICO	SANTA FE, NEW MEXICAN	11,800
NEW YORK	NEW YORK JOURNAL AMERICAN (H)	3,700,000

NEW YORK (CONT'D)	NEW YORK SUNDAY NEWS	7,104,000
	ALBANY TIMES UNION (H)	407,400
OKLAHOMA	E. & I. D. NEWS	20,500
	MUSKOGEE TIMES DEMOCRAT	30,800
	OKLAHOMA CITY OKLAHOMAN	792,000
OREGON	EUGENE REGISTER	65,200
	PORTLAND OREGONIAN	594,200
	PORTLAND JOURNAL	621,200
PENNSYLVANIA	PHILADELPHIA BULLETIN	2,484,300
	PHILADELPHIA ENQUIRER	4,477,800
	PITTSBURGH PRESS	1,923,600
	PITTSBURGH SUN TELEGRAPH (H)	1,575,000
TENNESSEE	MEMPHIS COMMERCIAL APPEAL	768,000
TEXAS	BEAUMONT ENTERPRISE	292,000
	GALVESTON DAILY NEWS	70,200
	LAREDO TIMES	61,200
UTAH	SAN ANTONIO LIGHT (H)	507,500
	SALT LAKE CITY TRIBUNE	531,600
WASHINGTON	BELLINGHAM HERALD	20,800
	SEATTLE TIMES	963,000
	SPOKANE SPOKEMAN	432,900
	WALA WALA UNION BULLETIN	16,100
	SEATTLE POST INTELLIGENCER (H)	910,000
WISCONSIN	MILWAUKEE JOURNAL	1,431,900
	MILWAUKEE SENTINEL (H)	791,700
CANADA	WINNIPEG FREE PRESS	459,600
	LE SOLEIL	333,000
	VICTORIA DAILY COLONIST	65,600
	VANCOUVER	569,700
	WINDSOR STAR	109,650
	SASKATOON STAR	73,800
	REGINA LEADER POST	45,700
	WINNIPEG UNION	143,200
	EDMONTON JOURNAL	185,800

(H) - REPRESENTS HEARST PLANT.

11/1/56

2195

PAPERS PRINTED BY INTERNATIONAL COLOR PRINTING
Wilkes Barre

Akron, Ohio, Beacon Journal
 Anderson, S.C., Independent
 Ashland, Ky., Independent
 Asheville, N.C., Citizen Times
 Athens, Ohio, Messenger
 Augusta, Ga., Chronicle
 Austin, Texas, Statesman
 Beckley, W. Va., Register
 Binghamton, N.Y., Press
 Birmingham, Ala., News
 Bluefield, W. Va., Telegraph
 Bradenton, Fla., Herald
 Bristol, Va., Herald Courier
 Canton, Ohio, Repository
 Charleston, J. Va., Gazette
 Charleston, W. Va., Mail
 Charleston, S. C., Evening Post
 Charleston, S. C., News & Courier
 Charlotte, N.C., Observer
 Chattanooga, Tenn., Times
 Clarksburg, W. Va., Exponent Telegram
 Clearwater, Fla., Sun
 Columbia, S. C., State
 Columbus, Ga., Ledger Enquirer
 Cumberland, Md., Times
 Danville, Va., Register
 Dayton, Ohio, News
 Decatur, Ala., Daily News
 Denton, Texas, Record Chronicle
 Durham, N.C., Herald
 Detroit Mich., Polish Ely News
 Elizabeth City, N.C., Advance
 Elizabethton, Tenn., Star
 Fairmont, W. Va., Times
 Farmville, Va., Herald
 Gadsden, Ala., Times
 Garden City, N.Y., Newsday
 Greenville, Tenn., Sun
 Greenville, S. C., News
 Harrisburg Patriot News
 Henderson, N.C., Dispatch
 Hereford, Texas, Brand
 Huntington, W. Va., Herald Adv.
 Huntsville, Ala., Times
 Ironton, Ohio, Tribune
 Jackson, Miss., State Times
 Jackson, Tenn., Sun
 Jamaica, N.Y., Press
 Kennesaw, N.C., Independent
 Kingsport, Tenn., Times
 Knoxville, Tenn., Journal
 Lake Charles, La., Amer. Press
 Las Cruces, N.M., Sun News
 Lexington, Ky., Herald Leader
 Lima, Ohio, News
 Lynchburg, Va., News & Advance
 N.Y. Mirror
 Lynn, Mass., Telegram
 Macon, Ga., Telegraph
 Marion, Ind., Tribune
 Martinsville, Va., Bulletin
 McKeesport, Pa., Daily Advance
 Miami, Fla., Herald
 Middletown, Ohio, News Journal
 Monroe, La., News Star World
 Montgomery, Ala., Advertiser
 Morehead City, N.C., News Times
 Middletown, N.Y., Record
 Newark, N. J., Ledger
 New Bedford, Mass., Std. Times
 Norfolk Va., Pilot
 Orlando, Fla., Sentinel
 Palaski, Va., S. W. Times
 Parkersburg, W. Va., News
 Portsmouth Times
 Philadelphia, Pa., Mayfair Times
 Pittsburgh, Pa., Sun-Telegraph
 Port Arthur, Texas News
 Portland, Maine, Telegram
 Raleigh, N.C., News & Observer
 Raleigh, N.C., Times
 Reading, Penna., Eagle
 Richmond, Va., Times Dispatch
 Roanoke, Va., Times
 Rome, A., News Tribune
 Savannah, Va., News
 Scranton, Pa., Scrantonian
 Spartanburg, S. C., Herald
 St. Petersburg, Fla., Times
 Trenton, N. J., Times
 Tuscaloosa, Ala., News
 Waco, Texas, Tribune
 Washington, D.C., Post & T. Herald
 Terre Haute, Tribune
 Tampa Tribune
 Waycross, Ga., Journal
 Wenatchee, Was., Daily World
 Wheeling, W. Va., News Register
 Wilkes Barre, Pa., Independent
 Wilmington, N.C., Star News
 Winston Salem, N.C., Journal
 SPANISH
 Mid-Ocean, Printed in English
 Havana, Marina
 Havana, El Pais
 Havana, Excelsoior
 Havana, El Mundo
 Havana, Informacion
 Venezuela, El. National, Sun, Tribune
 Venezuela, La. Esfera
 San Juan, El Mundo
 Panama City American (Printed in English)
 Tampico, Mexico
 Caracas, Venezuela, Printed in English

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PAPERS PRINTED BY INTERNATIONAL COLOR PRINTING

Wilkes Barre

Akron, Ohio, Beacon Journal
 Anderson, S.C. Independent
 Ashland, Ky., Independent
 Asheville, N.C. Citizen Times
 Athens, Ohio, Messenger
 Augusta, Ga., Chronicle
 Austin, Texas, Statesman
 Beckley, W. Va., Register
 Binghamton, N.Y. Press
 Birmingham, Ala., News
 Blackfield, N. Va., Telegraph
 Bradenton, Fla., Herald
 Bristol, Va. Herald Courier
 Canton, Ohio, Repository
 Charleston, J. Va., Gazette
 Charleston, N. Va., Mail
 Charleston, S. C. Evening Post
 Charleston, S. C. News & Courier
 Charlotte, N.C. Observer
 Chattanooga, Tenn. Times
 Clarksburg, W. Va. Exponent Telegraph
 Clearwater, Fla., Sun
 Columbia, S. C. State
 Columbus, Ga. Ledger Enquirer
 Cumberland, Md. Times
 Danville, Va. Register
 Dayton, Ohio, News
 Decatur, Ala., Daily News
 Denton, Texas, Record Chronicle
 Durham, N.C. Herald
 Detroit Mich., Polish Dly News
 Elizabeth City, N.C. Advance
 Elizabethton, Tenn., Star
 Fairmont, W. Va., Times
 Fairville, Va. Herald
 Gadsden, Ala., Times
 Garden City, N.Y. Newsday
 Greenville, Tenn., Sun
 Greenville, S. C. News
 Harrisburg Patriot News
 Henderson, N.C. Dispatch
 Hereford, Texas, Brand
 Huntington, W. V., Herald Adv.
 Huntsville, Ala., Times
 Ireton, Ohio, Tribune
 Jackson, Miss., State Times
 Jackson, Tenn., Sun
 Jamaica, N.Y. Press
 Keokuk, N.C. Independent
 Kingsport, Tenn., Times
 Knoxville, Tenn. Journal
 Lake Charles, La., Amer. Press
 Las Cruces, N.M. Sun News
 Lexington, Ky., Herald Leader
 Lima, Ohio, News
 Lynchburg, Va. News & Advance
 N.Y. Mirror
 Lynn, Mass., Telegram
 Macon, Ga. Telegraph
 Marion, Ind., Tribune
 Martinsville, Va. Bulletin
 McKeesport, Pa., Daily Advance
 Miami, Fla. Herald
 Middletown, Ohio, News Journal
 Monroe, La., News Star World
 Montgomery, Ala., Advertiser
 Norehead City, N.C. News Times
 Middletown, N.Y. Record
 Newark, N. J. Ledger
 New Bedford, Mass. Std. Times
 Norfolk Va., Pilot
 Orlando, Fla., Sentinel
 Pulaski, Va., S. W. Times
 Parkersburg, W. Va. News
 Portsmouth Times
 Philadelphia, Pa. Nayfair Times
 Pittsburgh, Pa. Sun-Telegraph
 Port Arthur, Texas News
 Portland, Maine, Telegram
 Raleigh, N.C. News & Observer
 Raleigh, N.C. Times
 Reading, Penna., Eagle
 Richmond, Va. Times Dispatch
 Roanoke, Va. Times
 Rome, A., News Tribune
 Savannah, Va., News
 Scranton, Pa., Scrantonian
 Spartanburg, S. C. Herald
 St. Petersburg, Fla. Times
 Trenton, N. J. Times
 Tuscaloosa, Ala., News
 Waco, Texas, Tribune
 Washington, D.C. Post & T. Herald
 Terre Haute, Tribune
 Tampa Tribune
 Waycross, Ga., Journal
 Wenatchee, Wash., Daily World
 Wheeling, W. Va., News Register
 Wilkes Barre, Pa. Independent
 Wilmington, N.C. Star News
 Winston Salem, N.C. Journal
 SPANISH
 Mid-Ocean, Printed in English
 Havana, Marina
 Havana, El Pais
 Havana Excelsior
 Havana El Mundo
 Havana Informacion
 Venezuela, El Nacional, Sun. Tribune
 Venezuela, La Esfera
 San Juan, El Mundo
 Panama City American (Printed in English)
 Tepic, Mexico
 Caracas, Venezuela, Printed in English

1830

October 11, 1956

724 FOR IDENT.
B-64 IN EVID.
H. T. NOEL
OFFICIAL REPORTER
U. S. DISTRICT COURT

Mr. E. R. McDowell
Publisher
The Lima News
Lima, Ohio

Dear Mr. McDowell:

Our newsprint supply at this time does not permit our presenting a proposal on printing the comics for the Lima News.

Thank you for calling upon us and I trust we may have such an opportunity at some later date.

Very truly yours,

J. W. Koessler,
President

JWK:bv

Betty mail this to
FD Licht.
King Features Syndicate
235 East 45th Street
New York N.Y.

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IN EVID.
H. T. NOEL
OFFICIAL REPORTER
U. S. DISTRICT COURT

October 2, 1936

TO: Mr. F. J. Nicht

FROM: R. K. Rogers

Dear Mr. Nicht:

We have a cancellation from the Lima, O. NEWS on their readyprint arrangement with us. I checked but find nothing to indicate either on our records or through the Greater Buffalo printing schedules that the NEWS also receives an NEA section. Lima is owned by Mr. Hoiles and Clarence tells me other papers in the chain have sections printed in Greater Buffalo Press's plant. Whether these are NEA printings or direct arrangements with Greater Buffalo we do not know.

The important point at this juncture is to take some precautionary action with Mr. Koessler to avoid him giving a price to Lima which might result in our losing the business.

Sincerely,

R. K. Rogers

RKR:IF

MEMORANDUM

May 10, 1933

The following points should be incorporated in the proposed selling contract with GBP:

1. It must be contingent on our proposed new ICP contract.
2. We must be exclusive sales agents.
3. Greater Buffalo is to retain all accounts they deal with directly and in effect on the date of our contract.
4. KFS is to retain all of its direct business.
5. All current KFP billings against KFS are to continue without change. This can be covered by schedules attached to the contract or contracts.
6. The contract should call for a definite rate per thousand fairs, to be revised up or down if necessary in order to conform with the character of the run or runs.
7. The contract should be for a 5 or 10 year period with one year's advance cancellation notice.
8. We should have an understanding concerning any increases in rate which involve something more than actual coverage of increased production expense. This, of course, should apply to only GBP business.
9. All negotiations for new business such as Oklahoma City, New Orleans, Jacksonville, etc., should be conducted exclusively by KFS.
10. There should be some kind of an understanding regarding the establishing of new printing stations. Lufkin and Coosa River are probably taken care of, but what about a Pacific Coast plant.
11. GBP should print newspaper supplements exclusively for us. We need not be interested in commercial work.
12. Should we have an understanding regarding the acquisition of other plants?
13. All contracts for new business should be in the name of KFS, Buffalo to charge us a fixed amount for printing new business.
14. Should there be an understanding regarding the printing of any Hearst newspaper comic supplements?

15. Who will we deal with under the new setup, Gorman or Kossaler, or both? Maybe that will take care of itself.
16. Try to have an understanding that KFS can make arrangements with other printers in the event they can do better for us because of geographical locations, than JBP.
17. We should be protected on any of our special service billing such as combinations.
18. Be sure to try to include clause in our contracts with LCP and G&P regarding a sale of the company. The clause should specify we would have an option to buy or be given a preference over others.

THIS AGREEMENT between GREATER BUFFALO PRESS INC., a New York Corporation, hereinafter called the "Press," and KING FEATURES SYNDICATE, a division of The Hearst Corporation, a Delaware Corporation, hereinafter called the "Syndicate."

WITNESSETH THAT:

WHEREAS Press is in the business of printing four color newspaper comic sections, herein referred to as color supplement.

NOW THEREFORE the parties agree as follows:

1. Press appoints Syndicate sales agent in the field of color supplement printing. However if Press makes direct sales, Press will pay to Syndicate

(a) with respect to all sales by Press to the accounts listed in Schedule A, commissions at the rates specified in Schedule A, and

(b) with respect to any new sale by Press to an account not listed in Schedule A (except sales to Scripps Howard Newspapers and affiliated companies and sales of the publication known as Weekend,) and present accounts of the Papert Newspaper Group a commission of fifty cents a thousand.

2. All sales by Syndicate shall be made in the name of Syndicate at prices determined by Syndicate and

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13-72 IN EVID.
H. T. NOEL
OFFICIAL REPORTER
U.S. DISTRICT COURT

billed directly by Syndicate which shall pay Press at the rates specified in Schedule B and shall be entitled to retain as its commission any excess over such rates. The rates specified in Schedule B may be increased or decreased in accordance with and in proportion to increased or decreased labor rates or material or service costs. The Press agrees to sell its printing services to new accounts at no lower prices than those listed in Schedule B plus 50¢ per thousand.

3. Press will send to Syndicate duplicate invoices on all such new accounts sold by Press directly and not through Syndicate.

The word "new" in paragraphs 1B, 2 and 3 is defined as accounts not presently held by Greater Buffalo Press Inc.

4. Press agrees not to solicit or contact any accounts which Press or its affiliated company or companies is printing for Syndicate.

5. Syndicate agrees to place a combined total of 75% of Syndicate's supplement printing requirements as of the effective date of this contract (but not more than 75% of its supplement printing requirements at the time) either with Press or with International Color Printing Co. of Wilkes Barre, Pennsylvania, or both.

6. All supplement pages ordered by Syndicate will be printed with four colors or less if so designated by Syndicate.

7. The parties hereto shall be excused from total or partial performance hereunder because of and for the duration of strikes, fire damage, accidents, acts of God, unavailability

of transportation facilities, shortage of newsprint, or other causes beyond their control whether or not of the same class or character making performance or partial performance hereunder impossible.

8. Press will package the supplements ordered by Syndicate for its accounts in kraft paper or on skids as specified by Syndicate which will pay the return freight charges on the skids.

9. Syndicate will supply or cause to be supplied to Press the necessary matrices for the printing of comic supplements ordered by Syndicate. Press will print supplements in a proper and workmanlike manner satisfactory to Syndicate and will start printing as soon as practicable after receipt of matrices for such printing. Syndicate will determine the pages composing makereadies, and Press will print comic pages and advertising pages comprising supplements only in accordance with instructions received from Syndicate. Press will deliver the supplements to a carrier designated or approved by Syndicate at the place of printing appropriately directed and sufficiently in advance of release date, as practicalities such as arrival of mats, mechanical difficulties and desires of the account will allow, to permit time of arrival as designated by Syndicate, in no event later than six days prior to publication date. Press will not permit work on orders not booked by Syndicate to delay or affect the completion of orders from Syndicate accounts.

10. In the event Press shall offer any or all of

its printing plants for sale Press agrees that it will first make a written offer of sale thereof to Syndicate setting forth the price and terms at which it is willing to sell the same. Syndicate shall have 90 days within which to accept or reject the offer. If Syndicate fails to accept the offer Press shall be free to sell to some other party the property so offered but only at the price and terms at which the same shall have been offered to Syndicate. If Press desires to offer any or all of its printing plants for sale at a lower price or at better terms than the offer so made to Syndicate it will first make a written offer to Syndicate at the lower price or better terms or both and Syndicate shall have 90 days within which to accept or reject the offer. This procedure shall be repeated as often as Press lowers its price or alters its terms from the original offer.

11. In the event International Color Printing Company of Wilkes-Barre, Pennsylvania, discontinues the operation of any of its plants, Press agrees to print any supplements printed for Syndicate or any of its customers at any such plant before the discontinuance of the operation of such plant and not thereafter printed at other plants of International Color Printing Company at a price which will result in Syndicate paying no more to Press, printing and transportation included, than the amount paid to International Color Printing Company for printing such supplements at the

time of such discontinuance of the operation of such plant.

12. This agreement shall run from December 1, 1957 to November 30, 1967 and thereafter for successive periods of five years each unless terminated by written notice given by either party to the other to be effective as of November 30, 1967 or as of the end of any such five year period and delivered two years prior to the date as of which it is to be effective.

13. This agreement shall bind the successors and assigns of the parties hereto.

like 14. This contract shall be effective *May 5*
1958.....

IN WITNESS WHEREOF Greater Buffalo Press Inc. has caused this agreement to be executed by its President, and King Features Syndicate division of The Hearst Corporation by Frank J. Nicht, its General Sales Manager.

GREATER BUFFALO PRESS INC.

By *W. K. Kinsler*
 President

KING FEATURES SYNDICATE
 Division of The Hearst
 Corporation

By *Frank J. Nicht*
 General Sales Manager

George C. Dineen

SCHEDULE "A"

The Dallas News 50¢ per M
The Houston Chronicle 50¢ per M
The San Antonio Express 50¢ per M
The New Orleans Times Picayune 50¢ per M
The New Orleans States 50¢ per M
The Shreveport Times 50¢ per M
The Monroe World 50¢ per M
The Waterloo Courier \$1.00 per M
The Elmira Telegram 50¢ per M
The Wichita Falls Times 50¢ per M
The Harte Hanks Newspapers 50¢ per M
The Calgary Herald 83¢ per M

SCHEDULE "B"

Specifications: 4-page standard; 4 colors; page size approx-
imately 14 1/2 by 21 1/2 inches; 1957 labor rates; 32 pound weight
newsprint at \$233.50 per ton; A.W.F.A. inks, standard colors;
individual, not cumulative, runs of the quantities specified;
prices f.o.b. plants of the "Press"

[illegible]

SCHEDULE "B"

Specifications: 4-page standard; 4 colors; page size approximately 14 $\frac{1}{2}$ by 21 $\frac{1}{2}$ inches; 1957 Labor rates; 32-pound weight newsprint at \$133.50 per ton; A.M.P.A. inks, standard colors; 50,000 copies or under, makeready cost page change \$29.50; one-third page change \$10.00; one-half page change \$15.00; four color heading change \$10.00; black heading change \$5.00; prices f.o.b. plants of the "Press"; individual, not cumulative, runs of the quantities specified.

	ITEM	PER M RUNNING RATE
Plates- Makeready--	Total	
Plates & Makeready--	per M	Above
Paper	M	3.31
Ink	M	.40
Press	M	1.18
Wrap & Ship	M	.18
Total	M	5.07

SCHEDULE "B"

Specifications: 4-page standard; 4 colors; page size approximately 14 1/2 by 21 1/2 inches; 1957 Labor Rates; 32-pound weight newsprint at \$133.50 per ton; A.M.P.A. inks, standard colors; 50,000 copies or under, makeready cost page change \$29.50; one-third page change \$10.00; one-half page change \$15.00; four color heading change \$10.00; black heading change \$5.00; prices f.o.b. plants of the "Press"; individual, not cumulative, runs of the quantities specified.

	ITEM	PER M RUNNING RATE
Plates- Makeready--	Total	
Plates & Makeready--	per M	Above
Paper	M	3.31
Ink	M	.40
Press	M	1.18
Wrap & Ship	M	.18
	Total	M
		5.07

P-17 FOR IDEN
IN EVID.

H. T. NOEL
OFFICIAL REPORTER
U. S. DISTRICT COURT

February 26, 1958

NOTES REGARDING GREATER BUFFALO PRESS

Letter June 13, 1955, Koessler to F. J. Nicht set forth points of agreement to be included in contract between King and GBP. King to be granted exclusive sales rights on all new business except Philadelphia BULLETIN, Des Moines REGISTER TRIBUNE, Oklahoma City OKLAHOMAN and the Papert group.

Based on above letter KPS drafted a contract which Koessler approved. Fourth Clause read, "Buffalo agrees that during the term of this contract it will not solicit, produce, or print comic supplements for any organization other than the Syndicate; that the Syndicate shall be Buffalo's exclusive sales agent; and that the Syndicate shall utilize the contracts of King Features Syndicate in formalizing client printing commitments. Exceptions are the following upon which Buffalo retains exclusive sales rights:" The above listed exceptions were repeated.

Koessler letter June 13, 1955, also stipulated "for the period of this contract, the Greater Buffalo Press, Inc. will contract to print newspaper supplements only for such accounts as it presently holds, and for such new accounts as it is privileged to negotiate and contract under this agreement and for King Features Syndicate."

we bill GBP each week for the following runs in the amounts indicated:

Harte-Hanks Newspapers

San Angelo.....	50¢	per M
Abilene.....	" "	" "
Big Springs.....	" "	" "
Snyder.....	" "	" "
Denison.....	" "	" "
Marshall.....	" "	" "
Paris.....	" "	" "
Greenville.....	" "	" "
Corpus Christi.....	" "	" "

Elmira Star-Gazette.....	50¢	per M
Shreveport Times.....	" "	" "
Wichita Falls Record-News..	" "	" "
New Orleans States.....	" "	" "
New Orleans Times-Picayune..	" "	" "
Calgary Herald.....	83¢	per M
Monroe News Herald.....	50¢	per M
Waterloo Courier.....	\$1.00	per M

Total revenue on above as of this date.....\$563.40

1/21/58 H
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THEIR OWN PICTORIAL REVIEW.

I HAVE NOT ATTEMPTED TO WORK OUT ANY COST IN CONNECTION WITH THESE PRINTINGS BUT LIST BELOW PRODUCTION INFORMATION WHICH WOULD BE NECESSARY TO ESTIMATE COST.

PUSH: 14-PAGE STANDARDS AS PRINTED IN CHICAGO GILSON PLANT

<u>NAME OF PAPER</u>	<u>CIRCULATION</u>	<u>CIRCULATION</u> <u>AD</u>	<u>PRESS</u> <u>HOURS</u>	<u>S.W.</u> <u>PRESS HOURS</u>	<u>NET</u>
ALBANY, N.Y., TIMES UNION	120,000	420,000	9	36	11,667
BALTIMORE, MD., AMERICAN	365,000	1,137,500	18.25	73	15,582
BOSTON, MASS., ADVERTISER	570,000	1,995,000	29.5	118	16,907
CHICAGO, ILL., AMERICAN	810,000	2,835,000	40.5	162	17,500
DETROIT, MICH., TIMES	550,000	1,925,000	28.5	112	16,886
ELKHART, IND., SENTINEL	250,000	875,000	15	60	14,583
NEW YORK, N.Y., J. AMERICAN	900,000	3,150,000	44.5	178	17,697
PITTSBURGH, PA., SUN-TELEGRAPH	485,000	1,697,500	25.5	102	16,642
SAN ANTONIO, TEX., LIGHT	<u>165,000</u>	<u>507,500</u>	<u>10</u>	<u>40</u>	<u>12,688</u>
	4,155,000	14,542,500	220.75	883	16,470

PUSH: 14-PAGE STANDARDS AS PRINTED IN SAN FRANCISCO PLANT

LOS ANGELES, CALIF., EXAMINER	700,000	2,450,000	35.5	142	17,254
SAN FRANCISCO, CALIF., EXAMINER	525,000	1,837,500	27.5	110	16,705
SEATTLE, WASH., POST INTELLIGENCE	<u>250,000</u>	<u>800,000</u>	<u>16.25</u>	<u>66</u>	<u>15,977</u>
	1,505,000	5,267,500	79.25	317	16,617

SATURDAY HOME COMICS

CHICAGO, ILL., AMERICAN	450,000	900,000	22	44	20,455
NEW YORK, N.Y., J. AMERICAN	<u>450,000</u>	<u>900,000</u>	<u>22</u>	<u>44</u>	<u>20,455</u>
	900,000	1,800,000	44	88	20,455

SO THAT AS MUCH INFORMATION AS POSSIBLE CAN BE PUT TOGETHER AT THIS

TIME, I AM MAKING COPIES, AND OFFERING MEMBERS AN ADDITIONAL \$10.00 YOU PAY OUT 2486 -

BOOK 6, 1935 COVERING STANDARDS OF PACE ESTABLISHED FROM 1914 TO 1935

1846

SAN FRANCISCO.

I WILL GO NO FURTHER THAN WORKING OUT PRICES ON THE ABOVE PRINTINGS
UNTIL YOU ADVISE HOW YOU WOULD WITH US TO PROCEED.

JOE CLINTON

KL

3/6/53

Pack - The Comic WeeklyTRANSPORTATION OF SUPPLEMENTS-CURRENT DATA
AS OF MARCH 1, 1953PRINTED AT CHICAGO

DISTRIBUTING UNIT	TYPE OF TRANSP. SERVICE USED	CARRIER	RATE PER CWT		MINIMUM	PACKAGING
			BASIC	INCL. SURCHARGE AND % TAX		
ALBANY	BAGGAGE	N.Y.C.	.99	\$1.01970	5,000	BUNDLES
BALTIMORE	FREIGHT	B & O	.70	.82915 (F)	60,000	BUNDLES
BOSTON	FREIGHT	ERIC & NEW HAVEN	.76	.90022 (F)	60,000	BUNDLES
CHICAGO	TRUCK	HERALD - AMERICAN	.12 AVER.	.12 AVER.	-0-	SKIDS
DETROIT	TRUCK	LIBERTY OR INTERSTATE	.47	.48410	20,000	SKIDS
BILMORER	TRUCK	CO-ORDINATED	.28	.28810	20,000	$\frac{1}{2}$ ON SKIDS; $\frac{1}{2}$ BUNDLES
NEW YORK	FREIGHT	NYC OR B & O	.76	.90022 (F)	60,000	BUNDLES
PITTSBURGH	BAGGAGE	B & O	.55	.56650	5,000	BUNDLES
SAN ANTONIO	BAGGAGE	R.I.-N.Y., To, OR R.I. - NYPAC.	1.66 (F)	1.70980	20,000	BUNDLES

PRINTED AT SAN FRANCISCO PLANT:

LOS ANGELES	TRUCK	HILLS TRANSP.	.49	.50470	40,000	BUNDLES
SAN FRANCISCO	TRUCK	EXAMINER	.12	.12	-0-	$\frac{2}{3}$ SKIDS $\frac{1}{3}$ BUNDLES
SEATTLE	FREIGHT	S.P.-U.P. OR S.P.-N.P.	.78	.92391 (F)	50,000	BUNDLES

NOTES: (F) INCLUDES 15% SURCHARGE

(W) NEW RATE OF \$1.05 (SUBJECT TO 15% SURCHARGE ON $\frac{3}{4}$ TAX-TOTAL \$1.243725 PER CWT)
APPLIED FOR, NOW BEING CONSIDERED BY CARRIERS. THIS RATE WOULD BE ON A 40,000
LB. MINIMUM.

CALLING WEEKLY - SAN FRANCISCO PLANT

ESTIMATED COST OF PRODUCING 12, 14 OR 16 PAGE COMIC SECTION
FOR THE PORTLAND OREGONIAN.....
ALL STEREOTYPE - SELF-HARD PACKING - 5/8" NEWSPRINT...
PUBLISHER OR ADVERTISER FURNISHES MATS....
PRESS RUN 300,000 COPIES.

<u>PLUS-COSTS</u> (F.O.B. SAN FRANCISCO)	<u>12 PAGE</u>	<u>14 PAGE</u>	<u>16 PAGE</u>
STEREOTYPE PLATES (6 .34.00 EACH)	✓ 384.00	✓ 448.00	✓ 512.00
COLOR PRESS PAYROLL	1,083.47	1,387.97	1,387.97
COLOR PRESS EXPENSE	22.50	26.25	30.00
NEWSPRINT HANDLERS' PAYROLL-PRESSROOM	30.00	30.00	30.00
NEWSPRINT HANDLERS EXPENSE-PIER TO PLANT	33.75	39.38	45.00
NEWSPRINT	2,738.61	3,195.05	3,651.48
INK	339.00	346.00	453.00
MAILROOM PAYROLL	180.00	180.00	180.00
MAILROOM EXPENSE	17.00	20.00	21.00
LOADING SUPPLEMENTS IN FREIGHT CAR	40.00	40.00	40.00
LIGHT, POWER, GAS, HEAT, WATER	15.00	20.00	20.00
NEWSPRINT STORAGE AND DEMURRAGE	3.00	3.00	3.00
INSURANCE-COMPENSATION & PAYROLL TAXES (3.1%)	53.24	64.67	66.65
ESTIMATED TOTAL PLUS-COST PER ISSUE	<u>✓ 5,531.97</u>	<u>✓ 6,850.32</u>	<u>✓ 6,640.10</u>

OTHER CHARGES (SHARE OF FIXED COSTS - NOT ADDED COSTS)

ADMINISTRATIVE PAYROLL	✓ 24.09	✓ 28.10	✓ 32.12
FINANCIAL AND ACCOUNTING PAYROLL	17.37	20.27	23.16
JACHINISTS PAYROLL	48.31	56.36	64.41
BUILDING SERVICE PAYROLL	45.51	53.09	60.68
ADMINISTRATIVE EXPENSE	6.51	7.60	8.68
FINANCIAL AND ACCOUNTING EXPENSE	.96	1.12	1.28
JACHINISTS EXPENSE	21.52	25.11	28.70
ELECTRICIAN'S EXPENSE	30.00	35.01	40.01
BUILDING SERVICE EXPENSE	8.72	10.17	11.63
TELEPHONE EXPENSE	.12	.14	.16
INSURANCE - FIRE (PLANT, EQUIP., NEWSP.)	7.27	7.27	7.27
" - GROUP LIFE AND HOSPITALIZATION	4.49	5.23	5.98
" - LIABILITY, USE & OCCUPANCY, STEAM BLR.	3.43	3.43	3.43
TAXES - COMMUNICATION & TRANSPORTATION	2.11	2.46	2.81
" - REAL ESTATE AND PERSONAL PROPERTY	42.32	42.32	42.32
MAINTENANCE AND REPAIRS	7.63	8.94	10.22
DEPRECIATION - BUILDING AND IMPROVEMENTS	42.16	42.16	42.16
" - MACHINERY AND EQUIPMENT	219.39	219.39	219.39
" - FURNITURE AND FIXTURES	2.61	2.61	2.61
ESTIMATED TOTAL - FIXED COSTS PER ISSUE	<u>✓ 537.03</u>	<u>✓ 573.70</u>	<u>✓ 610.36</u>

ESTIMATED TOTAL PRODUCTION COST-PER ISSUE	✓ 5,476.60	✓ 6,426.02	✓ 6,250.46
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6/1/53

2 1975

IF SERIOUS THOUGHT IS BEING GIVEN TO PRODUCING SEMI-HARD PACKING SUPPLEMENTS AT OUR SAN FRANCISCO PLANT, WE SHOULD BEGIN EXPERIMENTING WITH THAT TYPE OF PACKING ON OUR GOING WEEKLY SUPPLEMENTS SO THAT WE ARE ON FIRM PRODUCTION GROUND IF AND WHEN THE WORK IS TAKEN INTO THE PLANT.

O. T. BONDY

TJED

CC: MR. JOHN SACCHIA
FILE (2)

P.S. THE FREIGHT RATE FROM SAN FRANCISCO TO PORTLAND IS \$.72 PER C/T PLUS 15% SURCHARGE, PLUS 3% TRANSPORTATION TAX, FOR A TOTAL OF \$.85234 PER C/T. THE MINIMUM CARLOAD AT THIS RATE IS 50,000 LBS.

THE WEIGHT, FREIGHT COST AND FREIGHT COST PER THOUSAND COPIES TO PORTLAND WOULD BE:

	<u>12 PAGE</u>	<u>14 PAGE</u>	<u>16 PAGE</u>
WEIGHT OF 300,000 COPIES	45,000 LBS.	52,500 LBS.	60,000 LBS.
COST OF FREIGHT	\$426.42	\$447.74	\$511.70
FREIGHT COST PER THOUSAND COPIES	\$1.42	\$1.49	\$1.71

JWP
for Binder

~~XX~~

~~XX~~

2. TERM

Paragraph 10 of such contract is hereby amended to read as follows:

10. ASSIGNMENT OR RESALE.

Before selling any newspaper purchased hereunder or attempting to assign any rights to newspaper hereunder, Purchaser shall offer, in writing, to resell or release, as the case may be, to Seller any such newspaper. The price to the Seller on resale shall be equal to Seller's then current price under paragraph 4 (a) hereof, L.A. cart Purchaser's location. Release shall be without cost to either party.

This contract shall not be assigned without the prior written consent of the Seller, but such consent shall not be arbitrarily withheld. The prohibition against assignment shall not apply in the case of any bona fide merger or reorganization in which the Purchaser participates.

This agreement to be subject to all other terms and conditions of our contract of December
8, 1964, ~~wherein~~ thereon not herein specifically changed.

WITNESS WHEREOF, each of the parties has caused this amendment to the contract to be signed by the parties on, December 8, 1955, at Washington, D.C., and executed in its behalf by its appropriate representative duly authorized for this purpose on the 10 day of November, 1955.

HEARNST ENTERPRISES, INC.

4. *R. O. Thompson*
PURCHASER
TITLE *Pr. 1400*

COOSA RIVER NEWSPRINT COMPANY

by John A. Lutz
TITLE Vice-President

APRIL 4, 1955

	CIRCULATION <u>45</u>	HOURS	NET	TOTAL TRANS. SAVINGS
<u>TEXAS GROUP</u>				
ABILENE, TEXAS, REPORTER	82,000	4.48	18,750	29.55
BIG SPRINGS, TEXAS, HERALD	19,000	1.88	10,106	6.71
CORPUS CHRISTI, TEXAS, CALLER	144,500	9.14	15,809	88.56
DENISON, TEXAS, HERALD	24,000	1.16	20,690	5.49
GREENVILLE, TEXAS, BANNER	9,400	.50	18,800	
MARSHALL, TEXAS, MESSENGER	24,500	1.29	18,972	8.88
PARIS, TEXAS, NEWS	23,000	2.06	11,275	8.74
SAN ANGELO, TEX., STANDARD TIMES	78,500	5.86	13,376	13.85
SNYDER, TEXAS, DAILY NEWS	10,000	.70	14,285	1.76
TOTAL TEXAS GROUP	416,900	27.05	154,12	163.54
<u>DECATUR GROUP</u>				
ANDERSON, S. C., INDEP.	88,000	4.99	17,635	12.07
BRADENTON, FLA., HERALD	22,000	1.31	16,774	8.82
DANVILLE, VA., REGISTER	40,000	3.04	13,158	.19
DECATUR, ALA., DAILY	27,300	2.59	10,541	10.03
ELIZABETH CITY, N. C., ADVANCE	16,000	1.36	11,765	.08
HEREFORD, TEXAS	5,500	.50	11,000	
HUNTSVILLE, ALA., TIMES	39,200	2.32	16,897	14.04
KANNAPOLIS, N. C., INDEP.	21,200	1.36	15,288	1.92
LAKELAND, FLA., LEDGER	35,000	3.24	10,802	14.99
LYNCHBURG, VA., NEWS & SENTINEL	49,500	3.28	15,071	
MONROE, LA., STAR BOLD	69,000	4.93	13,796	28.74
ORANGEBURG, S. C., DEMOCRAT	14,000	1.26	11,111	1.32
PENSACOLA, FLA., JOURNAL	98,000	6.43	15,123	43.22
TALLAHASSEE, FLA., CAPITAL	30,000	2.50	12,070	
TUPELO, MISS., JOURNAL	28,000	1.58	7,621	
TOTAL DECATUR GROUP	582,700	42.74	13,634	136.02
<u>GENERAL GROUP</u>				
BRISTOL, VA., COURIER	50,000	4.48	11,312	36.02
CLEARWATER, FLA., SUN	22,000	1.38	16,667	8.82
GADSDEN, ALA., TIMES	47,200	3.33	14,174	16.35
MARTINSVILLE, VA., BULLETIN	17,400	.99	17,575	
SPARTANBURG, S. C., JOURNAL	73,500	4.31	18,213	10.70
TUSCALOOSA, ALA., NEWS	33,500	2.02	16,584	11.76
TOTAL GENERAL GROUP	248,600	16.37	15,168	83.65
<u>SPECIAL GROUP</u>				
CHARLESTON, S. C., NEWS & COURIER	128,000	8.67	14,763	17.29
DURHAM, N. C., HERALD SUN	79,000	6.58	12,006	4.15
MONTGOMERY, ALA., ADVERTISER	155,000	9.23	16,793	58.80
NEW ORLEANS, LA., ITEM	234,000	12.70	18,425	60.77
WICHITA FALLS, TEX., TIMES	99,000	7.37	13,439	6.71
WILMINGTON, N. C., STAR NEWS	56,500	4.02	11,722	5.81
TOTAL SPECIAL GROUP	751,500	47.37	15,222	152.73

	<u>CIRCULATION</u> <u>4⁸</u>	<u>HOURS</u>	<u>NET</u>	<u>TOTAL</u> <u>TRANS. SAVING</u>
<u>ASHEVILLE GROUP</u>				
ASHEVILLE, N. C., CITIZEN	106,500	6.39	16,666	14.82
JACKSON, TENN., SUN	32,500	3.15	10,317	21.02
LAKE CHARLES, LA., AMERICAN	<u>48,500</u>	<u>3.93</u>	12,341	<u>12.08</u>
TOTAL ASHEVILLE GROUP	187,500	13.47	13,920	47.92
<u>TYLER GROUP</u>				
ORANGE, TEXAS, LEADER	13,500	1.25	10,800	3.38
TEXAS CITY, TEXAS, SUN	9,700	.88	11,023	1.24
TYLER, TEXAS, COURIER TIMES	<u>47,500</u>	<u>4.22</u>	11,256	<u>6.22</u>
TOTAL TYLER GROUP	70,700	6.35	11,134	10.84
TOTAL ALL GROUPS	2,257,900	155.37	14,532	595.70

		CIRCULATION	S. M. HOURS	410 ONLY	410 & 717	410 & 717 & 565
SPECIAL EIGHTS	8-P.	1,582,800	108.50	108.50	77.68	38.54
JANEVILLE GROUP	8-P.	187,500	13.47			38.54
TYLER GROUP	8-P.	70,700	6.35			13.47
TEXAS GROUP	8-P.	416,900	27.05			6.35
					27.05	27.05
MIAMI HERALD	16-P.	1,200,000	60.00		30.00	30.00
AUGUSTA HERALD	16-P.	266,000	19.50		9.75	9.75
BIRMINGHAM	12-P.	640,500	38.45			12.82
ORLANDO	12-P.	178,500	15.82			5.27
ST. PETERSBURG	12-P.	178,500	15.82			5.27
SPRINGPORT	12-P.	237,000	25.50			7.50
410 ONLY				108.50		
410 & 717				107.68	107.69	
410 - 717 - 565						109.15

WEEKLY NESTRINT REQUIREMENTS

NO. PRINTED	CIRCULATION	HOURS	JAN.-FEB.	MAR.-APR.	MAY-DEC.	TOTAL LBS.	TONS
TO ONLY	1,582,800	108.50	75,975			607,800	304
TO - 717	3,457,900	215.37		165,979		1,493,611	747
TO - 717 - 565	5,018,400	327.46			240,883	<u>8,430,902</u>	<u>4,215</u>
TOTAL NEUPRINT ACQUIRED FOR 1956						10,532,516	5,266

1854

COPIES: JOHN BOOTH, TOM BRENNAN, JOE CLINTON, BESSIE, VINCE, FIVE EXTRAS

MARCH 29, 1956

MR. G. J. NEALENS, SECRETARY
CHAMBER OF COMMERCE
SYLACAUGA, ALABAMA

P-124 FOR IDENT.
P-124 IN EVID.
H. T. NOEL
OFFICIAL REPORTER
U. S. DISTRICT COURT

DEAR JACK:

WE HAVE, OF COURSE, RECEIVED YOUR PROPOSED AGREEMENT AND YOUR REQUEST FOR MORE INFORMATION FROM INTERNATIONAL COLOR PRINTING COMPANY AND GREATER BUFFALO PRESS. WE HAVE GONE OVER THE AGREEMENT CAREFULLY AND BOTH BUFFALO AND WILKES-BARRE WERE CONSIDERABLY DISTURBED BY THE FACT THAT WE WOULD HAVE TO PAY FIVE PERCENT INSTEAD OF THREE AND ONE-HALF PERCENT WHICH WAS THE FIGURE ORIGINALLY OFFERED. NO DOUBT, YOU REALIZE THIS DIFFERENCE IN INTEREST AMOUNTS TO ALMOST \$100,000 ON THE PRINCIPAL INVOLVED. THIS EXCESS PAYMENT, WHICH WILL RESULT FROM THE DIFFERENCE BETWEEN $3\frac{1}{2}\%$ AND 5% , IS SO GREAT THAT WE HAVE DECIDED THAT IT WOULD BE MUCH BETTER FOR US TO OWN OUR BUILDING AND WITH THIS IN MIND WE PLAN TO START NEGOTIATIONS EITHER WITH INSURANCE COMPANIES DOWN YOUR WAY OR WITH THE LOCAL BANKS WITH THE VIEW TO OBTAINING A MORTGAGE VERY SIMILAR OR BETTER IF POSSIBLE THAN THE ONE YOU HAD IN MIND. WE HAVE THE NECESSARY MONEY FOR THE DOWN PAYMENT AND WE WOULD LIKE TO TALK TO YOU AND MAYOR HOWARD CONCERNING THE TURNING OVER OF THE LAND TO US WITH THE UNDERSTANDING THAT WE WILL START ERECTION OF PLANT IN SYLACAUGA. WILL YOU LET US KNOW IF YOU CAN COME TO WILKES-BARRE AND MEET? SINCE THE CITY HAS BEEN SO COOPERATIVE AND SINCE MAYOR HOWARD HAS SHOWN SUCH A DEEP INTEREST IN OUR PLANS, I SINCERELY HOPE THAT HE WILL BE ABLE TO MAKE THE TRIP WITH YOU.

BEST REGARDS.

SINCERELY YOURS,

INTERNATIONAL COLOR PRINTING CO.

JOSEPH J. GORMAN

JG:MM

*3/30 AM - Nealens called J. J. Gorman
near + had been to MS.
3 1/2% on down payment T. 1134
5% " " 1134*

CC: KENNETH KOEBBLER, BILL HAMMOND.

CC: JOHN BOOTH, TOM BRENNAN, JOE CLINTON, BESSIE, VINCE, 4 EXTRAS.

MARCH 30, 1956

MR. WALTER J. KOEBBLER,
GREATER BUFFALO PRESS,
302 GROVE STREET,
BUFFALO, N. Y.

P-125 FOR IDENT
P-125 IN EVID.
H. T. NOEL
OFFICIAL REPORTER
U. S. DISTRICT COURT

DEAR WALTER:

UPON MY RETURN FROM BUFFALO THE OTHER DAY I WROTE A LETTER TO JACK NEALEANS OF THE SYLACAUGA CHAMBER OF COMMERCE ASKING HIM TO COME TO WILKES-BARRE. SEE COPY OF LETTER ATTACHED.

THIS MORNING MR. NEALEANS TELEPHONED, THAT WAS BEFORE HE RECEIVED MY LETTER. HE WISHED TO TELL ME THAT THE INTEREST RATE ON THE DOWN PAYMENT (UNDER THE SYLACAUGA AGREEMENT OUTLINED LAST WEEK) WOULD BE $3\frac{1}{2}\%$ AND INTEREST ON THE BALANCE WOULD BE 5% . I TOLD HIM WE WERE INTERESTED IN OWNING OUR OWN BUILDING, PROVIDED WE CAN OBTAIN THE LAND AND HE FELT THERE WOULD BE NO OBJECTION THERE. HOWEVER, THE CHANCES ARE THAT NO MATTER WHO WE DO BUSINESS WITH WE WILL HAVE TO HAVE THE SAME KIND OF INFORMATION ABOUT BUFFALO EARNINGS AS WAS EARLIER REQUESTED BY THE PEOPLE IN BIRMINGHAM AND SYLACAUGA. I EXPECT MR. NEALEANS AND MR. HOWARD WILL BE UP HERE SOMETIME DURING THE COMING WEEK AND IT MAY BE THAT WE WILL GO TO BUFFALO WITH THEM.

DURING OUR CONVERSATION LAST WEEK WE DISCUSSED THE COST OF HAULING NEWSPRINT FROM COOSA RIVER TO SYLACAUGA. I TOLD YOU WE FIGURED ON 50ϕ PER TON MILE HAULING 10,000 TON YEARLY. I LOOKED UP MY FIGURES AND FIND THAT THE ACTUAL ESTIMATED COST WAS $.8278$ PER TON, THAT WAS BASED ON USING TRUCK FOR ONLY PART OF THE WEEK AND CHARGING OFF ALL DEPRECIATION IN FOUR YEARS. BY USING TRUCK FOR HAULING BUNDLES, COST PER MILE WILL DROP DOWN TO SOMEWHERE IN THE NEIGHBORHOOD OF 50ϕ .

FOLLOWING IS COPY OF ESTIMATE OF TRUCK COST AS PREPARED ABOUT A YEAR

SUMMARY OF TRUCK COSTS

	<u>5 MILES</u>	<u>ADDITIONAL 21 MILES</u>
INSURANCE	14.96	14.96
LICENSE	1.92	1.92
LUBRICATION & ADJUSTMENTS	.20	1.00
TIRES	32.00	52.00
LABOR FRINGE COSTS	5.40	6.96
DEPRECIATION	59.13	59.13
GAS	4.00	20.00
OIL	.32	1.60
REPAIRS	1.62	8.00
TOTAL	<u>118.33</u>	<u>165.57</u>
COST PER TON	.5917	.8278

1856

LTR. - MR. J. WALTER KOEBLER

MARCH 30, 1956

I AM ALSO ENCLOSED A DETAILED BREAK DOWN OF OUR ESTIMATE OF COST FOR HAULING 200 TONS WEEKLY.

HAVE BEEN THINKING CONSIDERABLY ABOUT THE ADVANTAGE OF BEING ON SOUTHERN RAILWAY. SYLACAUGA IS ON THE SOUTHERN RAILWAY BUT THERE IS NO BAGGAGE SERVICE. THE NEAREST BAGGAGE SERVICE IS AT ANNISTON OR BIRMINGHAM, EACH ABOUT 50 MILES FROM COOSA RIVER. IF WE WERE LOCATED AT EITHER POINT IT IS TRUE WE WOULD HAVE THE ADVANTAGE OF BAGGAGE SERVICE AT ALL TIMES BUT ALSO WE WOULD HAVE TO MAKE 100 MILE ROUND TRIPS FOR NEWSPRINT AND WE WOULD DO THIS JUST ON THE CHANCE THAT SOMETIMES WE MIGHT HAVE TO USE BAGGAGE EXPRESS ENTIRELY.

BY LOCATING NEAR THE MILL WE SAVE CONSIDERABLY ON THE COST OF HAULING NEWSPRINT. IF WE WERE LOCATED IN ATLANTA AND SHIPPING ENTIRELY BY BAGGAGE EXPRESS, TOTAL COST TO ALL THE NEWSPAPERS IN THE SOUTH WOULD BE \$600.00 LESS, BUT WE WOULD NOT GET THE SAVING. NEWSPAPERS WOULD RECEIVE IT AND WE IN TURN WOULD HAVE TO PAY THE ADDITIONAL NEWSPRINT COST. IF WE LOCATE IN A TOWN NOT ON A RAILWAY WHERE BAGGAGE EXPRESS IS AVAILABLE, THERE SEEMS TO BE NO REASON WHY WE CANNOT CHANGE THE COST OF HAULING TO THE POINT WHERE RAILROAD WILL ACCEPT SUPPLEMENTS IN BAGGAGE SERVICE. SEE FIRST PARAGRAPH OF OUR CONTRACT WITH KING UNDER THE HEADING "CONTRACT A" - RATE SCHEDULE. THIS PARAGRAPH STATES:

"IN ACCORDANCE WITH THE PROVISIONS OF PARAGRAPH SEVENTH, SUB-DIVISION "A", TO AGREEMENT BETWEEN KING FEATURES SYNDICATE AND INTERNATIONAL COLOR PRINTING COMPANY DATED THE 30TH DAY OF JULY, 1955, THE FOLLOWING RATES SHALL APPLY FOR EACH ONE THOUSAND FOUR PAGE STANDARD SIZE SUPPLEMENTS OR EQUIVALENT, PRINTED, WRAPPED AND LABELED READY FOR SHIPMENT F.O.B. PRINTING STATION:"

THE LAST LINE IS THE IMPORTANT ONE. ACCORDING TO OUR CONTRACT OUR PRICES ARE F. O. B. PRINTING PLANT, THEREFORE, WE MUST HAUL TO BIRMINGHAM OR ANNISTON IN ORDER TO GIVE PAPERS TO THE SOUTHERN RAILWAY, WHY COULDN'T WE CHARGE FOR THIS SERVICE? IF WE WERE TO DELIVER PAPERS FROM COOSA RIVER TO BIRMINGHAM NEWS, I DON'T THINK THE PAPER WOULD EXPECT THE SERVICE FOR NOTHING AND THEREFORE WHY SHOULD OTHER NEWSPAPERS EXPECT FREE DELIVERY FROM COOSA RIVER TO THE BIRMINGHAM STATION OF THE SOUTHERN RAILWAY.

WILL BE IN TOUCH WITH YOU AGAIN AFTER WE HEAR FROM NEALEAND AND HOWARD.

SINCERELY YOURS,

INTERNATIONAL COLOR PRINTING CO.

JOSEPH J. GORMAN

MDL.

P. S. I AM WRITING THIS FOLLOWING OUR TELEPHONE CONVERSATION THIS MORNING TO THE EFFECT THAT IN THE MONTH OF APRIL WE WILL BE ABLE TO GIVE YOU AN ADDITIONAL 75 TO 100 TONS AND TOM BRENNAN WILL GET IN TOUCH WITH BILL HAMMOND. IT IS EXTREMELY IMPORTANT OF COURSE THAT WE KEEP VERY QUIET ABOUT THIS AS IT WOULD BE VERY BAD SWIFT- FOR HEARST OR KING FEATURES TO LEARN OF THE DIVERSION.

COMPRISON OF MOST RECENT SCHEDULE RECEIVED FROM HENNDON WITH S.E. RATES FROM BIRMINGHAM

FROM	W.B. PRESENT	HENDON SYLACAUGA	BAGGAGE RATE BIRMINGHAM
ALA. DECATUR	1.31	.55	.72
GADSDEN	1.31	.55	.72
HUNTSVILLE	1.31	.55	.72
MONTGOMERY	1.31	.55	.72
TUSCALOOSA	1.31	.55	.72
BIRMINGHAM	1.31	.55	.72
GA. AUGUSTA	1.21	.65	.72
COLUMBUS	1.31	.55	.72
SAVANNAH	1.21	.65	.72
WAYNESBORO	1.25	.70	1.44
Macon	1.31	.65	.72
ROME	1.31	.65	.72
S.C. ANDERSON	1.05	.75	.72
CHARLESTON	1.05	.85	.72
COLUMBIA	1.05	.85	.72
GREENVILLE	1.05	.75	.72
ORANGEBURG	1.05	.85	.72
SPARTANBURG	1.30 - Assoc.	—	.72
	1.05 - H.	.85	.72
VA. BRISTOL	1.27	No	
CHARVILLE	.80	1.10	
FARMVILLE	.84	1.10	.79
LYNNHURST	.84	1.10	2.30
MARTINSVILLE	.84	1.10	.86
ROSFORD	.55 Pa.	1.10	2.30
RICHMOND	.56	1.10	1.44
ROANOKE	.70	1.10	.93
			2.30
FLA. BRADENTON	1.47	.70	1.44
CLEARWATER	1.47	.70	1.44
FT. PIERCE	1.47	.70	1.44
GAINESVILLE	1.47	.70	2.30
LAKELAND	1.47	.70	1.44
MIAMI	1.58	.70	1.44
ORLANDO	1.47	.70	1.44
PENSACOLA	1.47	.70	1.44
ST. AUGUSTINE	1.47	.70	1.30
ST. PETERSBURG	1.47	.70	1.90
TALLAHASSEE	1.47	.70	1.44
TAMPA	1.45 - A	.70	1.44

CC: WALTER KOESSLER, KENNETH KOESSLER, BILL HAMMOND.
 CC: JOHN BOOTH, JOE CLINTON, TOM BRENNAN, VINCE, BEBBIE, 6 EXTRAS.

MARCH 30, 1936

FROM	W.B. REPRESENT	HERNDON SYNACALIDA	BAGGAGE RATE BIRMINGHAM
N.C. ASHEVILLE	1.05	.75	.72
CHARLOTTE	.84	.75	.72
DURHAM	.95	.90	.79
ELIZA CITY	.80 - Pa.	No	1.51
GASTONIA	.95	.75	.72
HERNDON	.95	.90	1.44
KANAWPOLIS	.95	.80	.72
RALEIGH	.90	.95	.79
WILMINGTON	1.05	1.00	1.44
WINTON SALEM	.95	.80	.79

Officers & Directors 8/3/60

Side Color Printing Co.

4/10/57 to 8/10/60

Joseph J. Garman	Wm	Director
John W. Kessler	Geo Wm	Director
Kenneth L. Kessler	Henry	Director
Joseph T. Clinton	Robt. Wm	Director
Wm L. Kessler	James	Director

P-157 FOR IDENT.
P-177 IN EVID.
 H. T. NOEL
 OFFICIAL REPORTER
 U. S. DISTRICT COURT

1860

137 FOR IDENT.
137 IN EVID.
H. T. NOEL
OFFICIAL REPORTER
U. S. DISTRICT COURT

July 8, 1956

Mr. J. J. Gorman
International Color Printing Co.
268 George St.
Wilkesbarre, Pa.

Dear Mr. Gorman:

I am enclosing a list in duplicate of all the papers we print, the quantities of the runs and the average number of pages.

If I can be of any further assistance, please advise.

Very truly yours,

Betty Voak (Mrs.)
Circulation Dept.

JBY
CC: J. W. Koessler
Enc. (2)

(Betty ok to file)

GREATER BUFFALO PRESS INC.

PAPER	CIRCULATION	TYPE OF SECTION
Allentown	80,000	10 Pg. Stand.
Atlanta Journal	818,000	14 Pg. Stand.
Bates Rouge	50,000	12 Pg. Stand.
Baltimore Sun	327,000	14 Pg. Stand.
Boston Globe	418,000	10 Pg. Stand.
Boston Post	218,000	10 Pg. Stand.
Buffalo Courier Express	312,000	12 Pg. Stand.
Chicago Daily News	630,000	16 Pg. Tab.
Chicago Sun Times	688,000	16 Pg. Tab.
Cincinnati Enquirer	284,000	12 Pg. Stand.
Cleveland Plain Dealer	636,000	12 Pg. Stand.
Columbus Citizen	113,000	8 Pg. Stand.
Columbus Dispatch	227,000	14 Pg. Stand.
Columbus Star	82,000	12 Pg. Tab.
Calgary Herald	68,000	16 Pg. Tab.
Dallas News	216,000	12 Pg. Stand.
Dayton Herald	93,000	8 Pg. Stand.
Detroit Free Press	520,000	12 Pg. Stand.
Detroit News	384,000	12 Pg. Stand.
Elmhurst News Tribune	74,000	10 Pg. Stand.
Elmira Telegraph	48,500	12 Pg. Stand.
Erie Dispatch	50,000	12 Pg. Stand.
Erie Times	48,000	12 Pg. Stand.
Evansville, Ind. Courier	94,000	12 Pg. Stand.
Ft. Wayne	96,000	12 Pg. Stand.
Ft. Worth	56,000	16 Pg. Tab.
Hawston Chronicle	233,000	10 Pg. Stand.
Indianapolis Star	325,000	16 Pg. Stand.
Indianapolis Times	110,000	12 Pg. Stand.
Kansas City Star	370,000	10 Pg. Stand.
Knoxville, Tenn. Sentinel	112,000	12 Pg. Stand.
Louisville Courier	320,000	8 Pg. Stand.
London Free Press	102,000	16 Pg. Tab.
Lancaster News	78,000	12 Pg. Stand.
Miami News	120,000	14 Pg. Stand.
Mobile Register	87,000	8 Pg. Stand.
Montreal	320,000	20 Pg. Tab. + 12 Pg. Tab. Novel
St. John, Newfoundland	24,000	20 Pg. Tab. + 12 Pg. Tab. Novel
Puerto Rico	32,000	16 Pg. Stand.
Nashville Tennessean	204,000	10 Pg. Stand.
NY Herald Tribune	615,000	6 Pg. Stand.
NY Post	290,000	12 Pg. Tab.
Ottawa Journal	68,000	16 Pg. Tab.
Poughkeepsie New Yorker	30,000	16 Pg. Tab.
Rapine Sunday Bulletin	30,000	8 Pg. Stand.
Rocky Mountain Democrat & Chron.	188,000	14 Pg. "
Springfield State Journal	68,000	16 Pg. Tab.
St. Louis Globe Democrat	385,000	12 Pg. Stand.
St. Paul Pioneer Press	197,000	12 Pg. Stand.
San Antonio Express	118,000	10 Pg. Stand.
Sioux City Journal	88,000	12 Pg. Stand.
Sioux Falls	82,000	10 Pg. Stand.
Sioux Falls	62,000	10 Pg. Stand.

PAPER	CIRCULATION	TYPE OF SECTION
Syracuse Herald American	224,000	12 Pg. Standard
Syracuse Post Standard	115,000	12 Pg. Standard
Amesville, Texas	70,000	10 Pg. Standard
Lubbock, Texas	54,700	10 Pg. Standard
Toledo Blade	187,000	14 Pg. Standard
Toronto Telegram	293,000	16 Pg. Tabloid
Utica Observer	55,000	10 Pg. Standard
Washington Star	203,000	12 Pg. Standard
Waterloo Courier	52,500	6 Pg. Standard
Yonkers Daily Vindicator	145,000	12 Pg. Standard
Athens, Ga. Banner	7,500	8 Pg. Standard
Columbia Record	20,500	8 Pg. Standard
Dubuque Telegraph	40,400	8 Pg. Standard
Lacrosse, Wisc.	34,300	8 Pg. Standard
Lacrosse, Wisc.	4,000	8 Pg. Standard
Nelbourne Times	6,000	8 Pg. Standard
St. Augustine	10,000	8 Pg. Standard
Statesville, N.C.	18,500	8 Pg. Standard
Statesville World	18,500	8 Pg. Standard
Ft. William	14,200	16 Pg. Tab.
Hamilton Spectator	28,500	16 Pg. Tab.
Kingsville, Ontario	20,300	16 Pg. Tab.
Kirkland Lake, Ontario	8,250	16 Pg. Tab.
Lethbridge Herald	17,675	16 Pg. Tab.
Medicine Hat News	8,900	16 Pg. Tab.
Moncton, N.B. Times Press	24,375	16 Pg. Tab.
Moore, Nev. Daily Times	10,050	16 Pg. Tab.
Ottawa Citizen	58,550	16 Pg. Tab.
Peterborough, Ontario	18,300	16 Pg. Tab.
Pt. Arthur, Ont. News	13,500	16 Pg. Tab.
Reynolds, Ark. Daily	6,325	16 Pg. Tab.
Reynolds, Ark. Chronicle	6,400	16 Pg. Tab.
St. John New Brunswick	47,750	16 Pg. Tab.
Sudbury, Ont. Star	27,575	16 Pg. Tab.
Tinnian, Ont. Daily Press	00	16 Pg. Tab.
Western Star, Corner Brook	7,475	16 Pg. Tab.
Atlantic City Press	28,500	8 Pg. Stand.
Borger Texas News Journal	12,300	3 Pg. Stand.
Butler, Ala. Eagle	24,500	8 Pg. Stand.
Tri Cities Florence	18,750	8 Pg. Stand.
St. Johns, Fla.	11,700	8 Pg. Stand.
Hammond Times	55,000	8 Pg. Stand.
Huron, O. Plainness	12,750	8 Pg. Stand.
Elmore, Ala. News	16,150	8 Pg. Stand.
Parola, Ala. News	53,000	8 Pg. Stand.
Rocky, Ala.	13,200	8 Pg. Stand.
Zionsville, Ohio	20,500	8 Pg. Stand.
St. Louis, Mo. News	38,000	8 Pg. Stand.
Des Moines, S. D. Sunday Times	65,500	8 Pg. Stand.
Laurens, S. C. Advertiser	16,300	8 Pg. Stand.
Concord, N.C.	22,000	8 Pg. Stand.
Elmore, Ala. News	49,500	8 Pg. Stand.

PAPER	CIRCULATION	TYPE OF SECTION
Abilene Reporter News	48,800	8 Pg. Stand.
Big Spring Herald	10,800	8 Pg. Stand.
Corpus Christi Caller Times	72,000	12 Pg. Stand.
The Danison Herald	12,750	8 Pg. Stand.
The Greenville Banner	8,800	8 Pg. Stand.
Marshall News Messenger	12,750	8 Pg. Stand.
The Paris News	12,500	8 Pg. Stand.
San Angelo Standard Times	40,000	8 Pg. Stand.
The Snyder Daily News	8,250	8 Pg. Stand.
Bozeman Montana Chronicle	8,000	8 Pg. Tab.
Bozeman Daily News	8,800	8 Pg. Tab.
Cambridge Ohio Daily Jeff.	14,000	8 Pg. Tab.
Clarksville Leaf Chron. Tenn	8,500	8 Pg. Tab.
Evening Standard Uniontown	20,250	8 Pg. Tab.
Cassette & Hall Hockistown	2,400	8 Pg. Tab.
Goodland Daily News	2,000	8 Pg. Tab.
Handerson Gleaner & Journal	8,000	8 Pg. Tab.
Lorain Ohio Journal	25,000	8 Pg. Tab.
Manfield News Journal	25,500	8 Pg. Tab.
Marion Herald, Uniontown	11,000	8 Pg. Tab.
Mexico City News	8,000	8 Pg. Tab.
Pine Bluff Commercial	17,000	8 Pg. Tab.
Roanoke Rapids	4,650	8 Pg. Tab.
Roswell Daily Record N.M.	11,000	8 Pg. Tab.
Sunday Mirror, Columbia	1,000	8 Pg. Tab.
Talladega Daily News	2,100	8 Pg. Tab.
Vermont Sunday News, Burlington	15,000	8 Pg. Tab.
Trail Daily News	6,000	8 Pg. Tab.
Yankee Independent	1,900	8 Pg. Tab.
Ada Evening News	2,600	8 Pg. Tab.
Artesia Daily Press	2,200	8 Pg. Tab.
Carlsbad Current Argus	8,000	8 Pg. Tab.
Durango Herald Democrat	4,500	8 Pg. Tab.
Farmington Times	5,500	8 Pg. Tab.
Gallup Independent	2,750	8 Pg. Tab.
Hamilton Royal Gazette	8,000	8 Pg. Tab.
Las Hornas		
Kingston Free Press	10,750	8 Pg. Tab.
Mexico City News	5,000	8 Pg. Tab.
Neenah Guardian	8,000	8 Pg. Tab.
Oregon City Bonner Courier	8,000	8 Pg. Tab.
Pasadena Chronicle Star	8,300	8 Pg. Tab.
Pasadena Sunday Eagle	8,000	8 Pg. Tab.
Williamshy News Herald	10,000	8 Pg. Tab.
Kentucky Ill Journal	25,000	8 Pg. Tab.
Artesia Ill. Kansas News	22,100	8 Pg. Tab.
Juliet Ill.	25,000	8 Pg. Tab.
Chillicothe Gazette	15,500	8 Pg. Tab.
Beruda Recorder	3,750	8 Pg. Tab.

GREATER BUFFALO PRESS INC.

<u>PAPER</u>	<u>CIRCULATION</u>	<u>TYPE OF SECTION</u>
Broken Bow, Nebraska	5,550	8 Pg. Tab.
Spencer, Iowa Times	5,000	8 Pg. Tab.
Huntington, Ind. Herald	5,700	8 Pg. Tab.
Wiles City, Mont. Star	4,650	8 Pg. Tab.
Weland, W.A. News	5,300	8 Pg. Tab.
Ft. Pierce, Fla.	4,700	8 Pg. Tab.
Leesburg, W.A. Comm. Ltd.	2,400	8 Pg. Tab.
Ocala, Fla. Banner	5,100	8 Pg. Tab.
Selma, Times Ala.	5,800	8 Pg. Tab.
Corbin, Ky. Times	4,200	8 Pg. Tab.
Frankfort, Ky.	5,800	8 Pg. Tab.
Hacienda, Ky.	5,500	8 Pg. Tab.
Elizabethton, Penn.	5,750	8 Pg. Tab.
Cocaine, Mass.	3,500	8 Pg. Tab.
Houndsville, W. Va.	3,000	8 Pg. Tab.
Fulaski, Va.	4,950	8 Pg. Tab.
Suffolk, Va. News	7,400	8 Pg. Tab.
Shelby, Ohio Globe	3,200	8 Pg. Tab.
Griffin Daily News	6,700	8 Pg. Tab.
Elkono, Ind. Trib.	11,950	8 Pg. Tab.
Valdosta, Ga. Times	10,000	8 Pg. Tab.
Norman, Okla. Transcript	7,450	8 Pg. Tab.
Lewiston, Mont. News	2,700	8 Pg. Tab.
McCook, Neb. Gazette	5,650	8 Pg. Tab.
Gainesville, Ga.	7,500	8 Pg. Tab.
Elvira, Ohio	22,000	8 Pg. Tab.
Wyoming State Cheyenne	11,750	8 Pg. Tab.
Laramie, Wyo. Daily Bull.	3,250	8 Pg. Tab.
Rawlins, Wyo.	3,600	8 Pg. Tab.
Fock Springs Wyo.	5,300	8 Pg. Tab.
Northern Wyo. Daily	5,500	8 Pg. Tab.
Ponca City, Okla.	11,500	8 Pg. Tab.
Sterling, Colorado	5,050	8 Pg. Tab.
Southwest Times Record		
Ft. Smith, Arkansas	22,500	8 Pg. Tab.
Sunday Examiner-Enterprise		
Macleanville, Okla.	10,500	8 Pg. Tab.
Sunday Times		
Okmulgee, Okla.	7,200	8 Pg. Tab.
The Journal Tribune		
Blackwell, Okla.	7,000	8 Pg. Tab.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

v.

GREATER BUFFALO PRESS, INCORPORATED
et al.,
Defendants.

Civil Action No. 9004

1-13-65
1-13-65 IN EVID.
H. T. NOEL
OFFICIAL REPORTER
U. S. DISTRICT COURT

COMPOSITE STIPULATION OF FACTS

(Irrespective of the tense used, the following facts unless otherwise designated refer to the period from January 1, 1954 to January 1, 1961).

1. Greater Buffalo Press, Inc., (Greater Buffalo) was a corporation organized and existing under the laws of the State of New York, with its principal place of business in Buffalo, New York. [Stip. 2, p. 2, par. 1]*/

2. Greater Buffalo was a printer of color comic supplements, and had been a printer of such supplements since 1933. [Stip. 2, p. 3, par. 7]

3. Greater Buffalo printed color comic supplements at its plant in Buffalo, New York and had facilities for printing such supplements at Dunkirk, New York. [Stip. 2, p. 3, par 8]

4. Many newspapers purchased their color comic supplements from Greater Buffalo, directly, generally pursuant to written contracts for a period of one year, subject to cancellation by either party for cause on sixty days notice. [Stip. 3, p. 1, par. 11]

*/ "Stip 1" hereinafter refers to stipulation dated September 24, 1963.
"Stip 2" hereinafter refers to stipulation dated January 15, 1963 and annexed to Stip. 1 as "Exhibit A".
"Stip 3" hereinafter refers to stipulation dated September 28, 1963.

5. In the sale of color comic supplements by Greater Buffalo, the cost of transportation was paid for by the newspaper customers. In most instances Greater Buffalo advanced the transportation cost, and was reimbursed by the newspaper customers. [Stip. 2, p. 3, par. 10]

6. Prior to June 1955 Greater Buffalo's competitors in the sale of color comic supplements to newspapers included King and NEA as well as others. The parties are in disagreement as to whether the foregoing was true after June 1955. [Stip. 1, p. 3, par. 7]

7. The International Color Printing Company (International) was a corporation organized and existing under the laws of the State of Pennsylvania, with its principal place of business in Wilkes-Barre, Pennsylvania. [Stip. 2, p. 2 par. 4]

8. Prior to June 1955, International was a printer of color comic supplements, and maintained printing plants at Wilkes Barre, Pennsylvania. It also maintained a printing plant at Peoria, Illinois until sometime after June 1955. [Stip. 1, p. 2, par. 2]

9. International from 1927 to June 1955 printed color comic supplements exclusively for King. [Stip. 1, p. 2, par. 3]

10. The color comic supplements printed by International for King were shipped directly to King's newspaper customers. Payments for such supplements by the newspapers were made to King pursuant to contracts between King and its newspaper customers. [Stip. 1, p. 2, par. 5]

11. The Hearst Corporation (Hearst) was corporation organized and existing under the laws of the State of Delaware, with its principal place of business in New York, New York. King Features Syndicate (King) was an unincorporated division of Hearst. [Stip. 2, p. 2, par 2.]

12. King, a Division of The Hearst Corporation, licensed newspaper feature rights, including the subject matter of comics, and sold color comic supplements to newspapers. King, the Division of Hearst, did not print the color comic supplements it sold, but made arrangements to have such supplements printed for its newspaper customers. However, some newspaper subsidiaries of The Hearst Corporation did print color comic supplements. [Stip. 1, p. 2, par. 4]

13. King sold color comic supplements to newspapers generally pursuant to written contracts. The terms of these contracts varied from one to five years. [Stip. 3, p. 1, par. 12]

14. Prior to June 1955 King's competitors in the sale of color comic supplements to newspapers included Greater Buffalo, NEA, Eastern Color Printing Company, World Color Press, Inc., and Acme Colorprint Company, as well as others. The parties are in disagreement as to whether the foregoing was true after June 1955. [Stip. 3, p. 1, par. 13]

15. In 1954, the annual gross receipts of Greater Buffalo for the sale and printing of color comic supplements was approximately \$8,613,000.00. During the same period International gross receipts for the printing of color comic supplements was approximately \$8,483,000.00 [Stip. 3, p. 2, par. 14]

16. On or about June 25, 1955 Greater Buffalo purchased the outstanding stock of International for \$575,000.00. [Stip. 1, p. 3, par. 8]

17. After Greater Buffalo acquired International's stock, International elected a new Board of Directors. Officers of Greater Buffalo were a majority of such elected Directors. [Stip. 2, p. 5, par. 27]

18. The compilation of the actual volume of production attributed to printers of color comic supplements for the year 1955, in plaintiff's exhibit 62, previously designated document number 257 and marked "D-13" in a proceeding heretofore had in this case, is an accurate summary of the Joseph J. Gorman survey for that year. [Stip. 1, p. 3, par. 9]

19. Southwest Color Printing Corporation (Southwest) was a corporation organized and existing since 1956 under the laws of the State of Texas, with its principal place of business in Lufkin, Texas. Southwest was a wholly owned subsidiary of Greater Buffalo. [Stip. 2, p. 2, par. 3]

20. In or about the latter part of 1958, the printing of color comic supplements was commenced at the Lufkin, Texas, plant of Southwest Color Printing Corporation. [Stip. 2, p. 6, par. 29]

21. Dixie Color Printing Corporation (Dixie) was a corporation organized and existing since 1957 under the laws of the State of Alabama, with its principal place of business in Sylacauga, Alabama. Dixie was a wholly owned subsidiary of Greater Buffalo. [Stip. 2, p. 2, par. 6]

22. Newspaper Enterprise Association, Inc. (NEA) was a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Cleveland, Ohio. NEA was a subsidiary of The E W Scripps Company. [Stip. 2, p. 2, par. 3]

23. NEA licensed newspaper feature rights, including the subject matter of comics, and sold color comic supplements to newspapers at least from 1955 to 1961. NEA itself did not print the color comic supplements which it sold, but had such supplements printed by Buffalo Colorpress, Inc. and other comic printers. [Stip. 2, p. 4, par. 18]

24. Buffalo Colorpress was a printer of color comic supplements and maintained a printing plant in Buffalo, New York, until a short time after October 1955. [Stip. 2, p. 4, par. 19]

25. Until its liquidation in 1956, Buffalo Colorpress was a subsidiary of NEA, and NEA handled the sale to newspapers of the majority of the color comic supplements printed by Buffalo Colorpress prior to October 1955. [Stip. 2, p. 4, par. 20]

26. NEA at one time was known as NEA Service, Inc. In 1955 United Feature Syndicate, Inc. was a wholly owned subsidiary of United Press Association of New York, and during 1955 United Press Association of New York became a wholly owned subsidiary of The EW Scripps Company. [Stip. 1, p. 2, par. 6]

27. During the period from January 1, 1954 to January 1, 1961, unless otherwise designated, the following named individuals were in the employ of the indicated companies and held the title or job description referred to below:

<u>Name</u>	<u>Company</u>	<u>Position</u>
Herbert W. Walker	NEA	President 4/3/58 - 1/1/61; Vice President 1/1/54 - 4/3/58; General Manager
William A. Borglund	NEA	Vice President 7/27/55 - 1/1/61
Fred S. Ferguson	NEA	President 1/1/54 - 4/3/58
Earl H. Anderson	NEA	Business Manager 1957 - 1961
Eli C. Minton	NEA	Sales Representative
Med Mills	NEA	Sales Representative
Robert Whitehead	NEA	Sales Representative
Herbert W. Walker	Buffalo Colorpress, Inc.	Vice President 1/1/50 - 7/31/56; Director 1/1/54 - 1/1/61
William A. Borglund	Buffalo Colorpress, Inc.	Director 1/1/54 - 1/1/61
Earl H. Anderson	Buffalo Colorpress, Inc.	President 6/11/56 - 7/31/56; Director 6/11/56 - 7/31/56; Vice President 4/2/53 - 6/11/56

<u>Name</u>	<u>Company</u>	<u>Position</u>
L. E. Herman	Buffalo Colorpress, Inc.	President 1/1/50 - 3/17/56; Director 1/1/54 - 3/17/56
Fred S. Ferguson	Buffalo Colorpress, Inc.	Chairman 1/1/54 - 7/31/56; Director 1/1/54 - 7/31/56
Richard E. Berlin	Hearst	President
Joseph J. Gorman	International	President
John W. Booth	International	Treasurer 1955 - 1961
Bessie J. Gorman	International	Assistant Secretary 1955 - 1961
Kenneth L. Koessler	International	Vice President 1955 - 1961
William J. Hammond	International	Secretary
Tom Brennan	International	Purchasing Agent
Roger Zardus	International	Supervisor Machinery Maintenance
Vince Garvey	International	Transportation Manager
Joseph T. Clinton	International	Assistant Production Manager 1/1/54 - 1960
Frank J. Nicht	King	Sales Manager
Frank C. McLearn	King	General Manager 1958 - 1/1/61
Ward Green	King	General Manager 1/1/54 - 1958
Clarence Rabinow	King	Salesman
Edward Wade	King	Salesman
R. K. Rogers	King	Salesman
George Driscoll	King	Salesman
Sadie Elswit	King	Manager, Service Department
James Burns	King	Salesman, 1957

<u>Name</u>	<u>Company</u>	<u>Position</u>
Joseph Gorman	Dixie Color Printing Corporation	President 4/18/57 - 5/3/60
Joseph T. Clinton	Dixie Color Printing Corporation	Plant Manager, 1961; Assistant Secretary, 4/18/57; Director, 4/18/57
J. W. Koessler	Greater Buffalo	President
Kenneth L. Koessler	Greater Buffalo	Secretary
William Hammond	Greater Buffalo	Treasurer 8/15/55 - 1/1/61
L. E. Herman	Greater Buffalo	Vice President March 1956
R. O. Sternberger	Hearst	President, Hearst Enterprises, Inc., Hearst subsidiary, 12/8/54 Vice President, Newsprint Manager of Hearst subsidiaries engaged in the publication of Hearst newspapers
J. D. Gortatowsky	Hearst	Chairman, Hearst subsidiaries engaged in publishing Hearst newspapers
Raymond Bauman	International	Bookkeeper 1959
Fred Brown	International	Supervisor, Electrical Maintenance

[Stip. 2, p. 8, par. IIB]

28. The initials "WHB" in plaintiff's exhibits 35 and 34, previously numbered documents 24 and 75 indicate that such documents were either prepared by, or under the supervision of, William H. Borglund. [Stip. 2, p. 7, par. 33(a)]

29. The initials "EHA" in plaintiff's exhibit 31, previously numbered document 69 indicates that such document was either prepared by, or under the supervision of, Earl H. Anderson. [Stip. 2, p. 7, par. 33(d)]

30. (a) The initials appearing "WMB" in plaintiff's exhibit 36, and document previously numbered 28 indicate that such initials refer to William M. Borglund.

(b) The initials "BMW" in plaintiff's exhibits 39, 50, 44, 30, 46, and 48, and in documents previously numbered 26, 30, 35, 36, 65, 67, 68, 74, 76, 145, 146 and 182 indicate that such documents were either prepared by, or under the supervision of, Herbert W. Walker.

(c) The initials "KFS" in plaintiff's exhibits 36, 38 and 37, and documents previously designated numbered 28, 115 and 253 refer to King Features Syndicate. [Stip. 1, p. 3, par 10(a), (b) and (c)]

3. The initials "FJM" in plaintiff's exhibits 20, 22, 12, 19, and 10, and in documents previously numbered 57, 59, 96, 104, 107, 109, 113, 161, 165, 200, 252, 254, and 258 indicate that such documents were either prepared by or under the supervision of Frank J. Nicht, but do not indicate that such documents were prepared in the regular course of business of the aforesaid Nicht's employer or that it was any part of his duty as an employee to prepare such documents. [Stip. 3, p. 2, par. (15)]

Washington, D.C.

Dated: January 12, 1966

NUMBER PARTNERSHIP (NUMBER OF PARTNERS)	1 9 5 0	1 9 5 1	1 9 5 2	1 9 5 3	1 9 5 4	1 9 5 5	1 9 5 6	1 9 5 7	1 9 5 8	1 9 5 9
	25,119.	29,680.	31,732	32,540	31,050	29,976	29,736	26,960	25,687	25,993
TOTAL YEARLY INCOME	\$6,620,826.	7,246,422	8,389,461.	8,800,300.	8,466,940.	8,290,940.	8,386,108.	8,494,816.	7,693,548.	8,015,184.
OPERATING PROFIT BEFORE DEP. & TAXES	\$ 240,596.	267,000.	205,031.	197,900.	71,549.	236,022.	217,694.	180,704.	349,355.	489,692.
DEPRECIATION	37,636.	38,239.	48,216.	52,503.	53,995.	54,915.	93,630.	99,966.	110,745.	119,971.
PROFIT AFTER DEP.	202,960.	228,761.	156,815.	145,396.	17,554.	181,107.	114,063.	80,738.	238,610.	369,721.
TAXES	91,097.	130,084.	81,684.	74,705.	6,407.	92,807.	57,220.	38,828.	126,735.	196,800.
NET PROFIT AFTER DEPRECIATION & TAXES	111,902.	98,676.	75,131.	70,691.	11,146.	88,300.	56,843.	41,910.	111,875.	172,921.
NET PROFIT PER CENT OF INCOME	1.7%	1.4%	.9%	.8%	.1%	1.0%	.68%	.49%	1.45%	2.16%
WORKING CAPITAL	94,751.	67,909	(b) 36,998.	(b) 89,119.	(b) 107,728.	(b) 23,207.	537.	83,686.	250,497.	394,176.
DIVIDENDS PAID	49,500.	53,500.	55,500.	44,700.	34,800.	17,400.	--	--	--	--
AMOUNT OF ASSETS TO LIABILITIES	1.24-1	1.15-1	1-1	.93-1	.91-1	.92-1	1-1	1.14-1	1.47-1	171-1
NET WORTH	483,167.	514,374.	534,005.	570,461.	568,895.	698,946.	755,789.	802,620.	915,598.	1,089,726.

(b)-Deficit

Printed for IDENT
12-141 IN EVID.
 H. T. MOEL
 OFFICIAL REPORTER
 U. S. DISTRICT COURT